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SENATE RULES COMMITTEE  
STATE OF CALIFORNIA



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1 SENATE RULES COMMITTEE

2 STATE OF CALIFORNIA

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8 HEARING

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12 STATE CAPITOL

13 ROOM 113

14 SACRAMENTO, CALIFORNIA

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18 WEDNESDAY, JANUARY 4, 1995

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27 Evelyn J. Mizak  
28 Shorthand Reporter

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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

JOHN P. CAFFREY, Secretary  
State Water Resources Control Board

SENATOR JIM COSTA

BRYAN E. CARVER, Member  
Occupational Safety and Health Appeals Board

ELAINE W. DONALDSON, Chairperson  
Cal-OSHA Appeals Board

PAUL V. PRIOLO, Member  
California Community Colleges

DAVID MERTES, Chancellor  
California Community Colleges

S. WILLIAM MALKASIAN, Member  
State Board of Education

JAMES T. RUDE, Member  
Industrial Welfare Commission

WILLIE WASHINGTON  
California Manufacturers Association





APPEARANCES (Continued)

JAMES O. ABRAMS, Executive Vice President  
California Hotel and Motel Association  
California Lodging Industry Association

THOMAS R. LUEVANO  
California Association of Hospital and Health Systems  
Health Care Human Resource Management Association of  
California

JULIANNE BROYLES  
California Chamber of Commerce

ROY GABRIEL  
California Farm Bureau Federation

PAUL MAHAN  
California Trucking Association

DEBBY BOUCHER  
California Nurses Association

JACK HENNING  
California Labor Federation

ALLEN DAVENPORT  
Service Employees International Union

TOM RANKIN  
California Labor Federation

GERTI B. THOMAS, Member  
State Board of Education





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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: The Rules Committee will come to order.

Happy New Year, colleagues, staff and witnesses, Members, and so forth. We're happy to be back, I guess, especially happy to be functioning.

Mr. Caffrey, if you want to join us at the front table, we'll take up your confirmation first, and perhaps begin with a statement from Senator Costa.

SENATOR COSTA: Thank you very much, Mr. Chairman and Members of the Rules Committee.

Very briefly, I'd like to add my support for the renomination and the confirmation, I guess of John Caffrey, who serves on the State Water Resources Control Board.

I've worked with Mr. Caffrey over the years. While we obviously have not agreed on every single issue that we have dealt with, I have found him to be fair. I have found him to be reasonable, and very sincere in his efforts in attempting to try to deal with California's many difficult water problems that we face, both short-term as well as long-term.

And I think most recently, the evidence of what appears to be an agreement between the state and federal government on the most recent fed negotiations as a result of Secretary Babbitt and Governor Wilson's agreement on December 15th, the State Water Resources Control Board was a very significant participant in that effort. And as such, would like to see, I think, taking that good news and building on that in



1 the next upcoming years as the new Chairman of the Ag. and Water  
2 Committee, following the big shoes that Senator Ayala has left,  
3 but with his help and support, and other Members of the Senate,  
4 we think we can build on that progress, and I think John Caffrey  
5 will serve an important role in providing continuity if he is  
6 confirmed as the Governor's renominated him.

7 I'd just like to add my support.

8 CHAIRMAN LOCKYER: Thank you very much, Senator  
9 Costa.

10 Sir, do you want to start? I don't know if you have  
11 any opening comment.

12 MR. CAFFREY: Certainly, if you'd like me to,  
13 Senator, I'd be happy to do that.

14 CHAIRMAN LOCKYER: That would be an appropriate place  
15 to start, if you wish.

16 MR. CAFFREY: Thank you, sir.

17 Mr. Chairman and Members, for the record, I am John  
18 Caffrey, and I am honored to be here and I thank you for this  
19 opportunity.

20 I'm a 28-year state employee. I'm currently serving  
21 my fifth year as a member of the State Water Resources Control  
22 Board. It is coming to the conclusion of the first year of my  
23 second term. I am also serving as Chair. I've been in that  
24 capacity for two years.

25 Prior to my five years on this Board, I served four  
26 years in the Department of Water Resources as Deputy Director  
27 and then Chief Deputy, where I had responsibilities for dam  
28 safety, water conservation and water quality.





1 you may have of me. And again, I'm very grateful for this  
2 opportunity.

3 CHAIRMAN LOCKYER: I'm sure there will be a number of  
4 questions.

5 I might just preliminarily indicate that you have a  
6 career as a public servant that's very impressive.

7 MR. CAFFREY: Thank you, sir.

8 CHAIRMAN LOCKYER: And often politicians say nasty  
9 things about bureaucrats, or as one of my close friends would  
10 say, burro-crats, but you're one that illustrates how those  
11 types of career choices are personally satisfying as well as to  
12 the public good.

13 MR. CAFFREY: Thank you, Senator.

14 CHAIRMAN LOCKYER: Your work in water policy as a  
15 consensus builder is especially impressive. It's very easy for  
16 things to break down and nothing to happen. And I guess maybe  
17 that's the easy way to go, but we have problems, and we have  
18 great needs in terms of supply, distribution, pricing,  
19 conservation, transfers, and rights and quality, and the fact  
20 that you're able to enjoy the respect of virtually every serious  
21 participant and stakeholder in the policy area for your  
22 conscientiousness and fairness is quite impressive.

23 MR. CAFFREY: Thank you very much.

24 CHAIRMAN LOCKYER: I know there are questions, as  
25 Senator Costa had mentioned. I know that each one of us would  
26 probably disagree amongst ourselves, and so we'll have something  
27 to disagree about in this respect.

28 Let me call on Senator Ayala, Mr. Water. Do you want



1 to start?

2 SENATOR AYALA: Mr. Caffrey, the newly agreed upon  
3 Bay-Delta agreement that supposedly is the first step in many  
4 steps to be taken in terms of California water, many people have  
5 criticized that agreement as not being enough, sufficiently  
6 enough, to protect the salmon and the steelhead.

7 What is your position on that agreement that was just  
8 created here about month ago?

9 MR. CAFFREY: Well, although the Board hasn't voted  
10 on it yet, Senator, I'll offer this personal opinion.

11 I'm very hopeful that the plan does offer sufficient  
12 protections for the species that are listed as endangered, such  
13 as the delta smelt and the winter run salmon.

14 One of the things that is built into the agreement is  
15 that it will be reviewed in three years and reconstituted if  
16 need be. In addition to that, we will be opening our water  
17 rights proceeding probably no later than June of this year,  
18 after we go through the approval of the plan and the proper  
19 notification for the scoping of the water rights, and begin the  
20 allocation of the water costs of that plan.

21 So, it is an ongoing process, and we will be staying  
22 with it forever more, so to speak, to make sure that the  
23 resources are protected and all the beneficial uses get the  
24 supplies of water that they need.

25 SENATOR AYALA: As you indicated, it's only a three-  
26 year proposal, and you're going to be able to review it at that  
27 point.

28 So, you don't agree with those that criticize it for





1 the perfect world that the local governments could act  
2 responsibly enough to take care of their local resources, but  
3 while that, at this point in time, remains the philosophy of the  
4 Water Board, we are not going to be reticent to step in and  
5 handle the matter if there is not another alternative.  
6 Hopefully, we will do that in enough time.

7 CHAIRMAN LOCKYER: To wheel it around in response to  
8 Senator Ayala, I think what you've suggested is, there's  
9 probably not a current role, other than that which you would see  
10 in an adjudicatory function, for State Board or State  
11 Legislature.

12 MR. CAFFREY: Well, I wouldn't go so far as to say  
13 that, Senator Ayala and Senator Lockyer. We are looking at the  
14 matter.

15 One of our new Board members who you recently  
16 confirmed, John Brown, is very knowledgeable in the area of  
17 groundwater. And I have asked him or assigned him to monitor  
18 the situation, to work with the local farm community, to see if  
19 there is some way to do this differently, if need be. And  
20 again, in a consensus building mode, hoping that if those  
21 parties, those diverse parties, feel that this is the way to go,  
22 they could certainly build on the legislation that Senator Costa  
23 is the author of.

24 So, our minds are somewhat open on that, but our  
25 basic philosophy is still that the locals should be allowed to  
26 control their groundwater if that process can work responsibly.

27 SENATOR AYALA: Where in California do we now  
28 currently have the worst water quality problem?



1 staff modeled those, we were surprised that the effects were  
2 even better than we thought they might be on some of the  
3 species. So, we're very hopeful about that and will continue to  
4 work on it.

5 SENATOR AYALA: I have one more question, and you  
6 don't have to answer it if you don't want to.

7 What is your position on construction of a water  
8 delivery project from Northern to Southern California? And you  
9 don't have to answer if you don't want to.

10 MR. CAFFREY: I'll accept, with the caveat that I  
11 made earlier, Senator, about my role as eventually perhaps  
12 having to be involved in the decision process on water rights on  
13 facilities.

14 Are you speaking of a particular facility?

15 SENATOR AYALA: I'm thinking of any and all.

16 MR. CAFFREY: The general concept of moving water to  
17 Southern California?

18 SENATOR AYALA: Yes.

19 MR. CAFFREY: I think it's something that we  
20 absolutely have to do.

21 SENATOR AYALA: It's authorized by the Burns-Porter  
22 Act. It's just a matter of deciding which of the transfer  
23 facilities to construct.

24 MR. CAFFREY: That's right. We have 75 percent of  
25 our precipitation happening in the northern part of California,  
26 and at least that much percentage of our population requiring  
27 water to the south of the Tehachapis.

28 I very firmly believe that there are very sensitive





1 and capable, possible, ways of conveying water that's done in a  
2 way that's sensitive to the environment. And I think, frankly,  
3 that we're entering a new era of consensus building.

4 One of the things that I've -- one of the major  
5 changes, gentlemen, that I've noticed in the last year and a  
6 half, I would say, among all the parties that are concerned  
7 about water supply and water quality, is the need for a reliable  
8 water supply. And so, this coming together is a result, I  
9 think, of people looking for that reliability. And I think we  
10 are starting to have some success in the consensus approach of  
11 developing reliable supplies.

12 SENATOR AYALA: You handled that pretty good. Thank  
13 you.

14 I don't have any more questions.

15 CHAIRMAN LOCKYER: I won't let you off quite as  
16 easily on that particular issue.

17 I would be interested in your general thoughts just  
18 about concepts of transfer. What kind of facilities or what  
19 sort of system would be capable of moving substantial volumes  
20 with minimal environmental hazard?

21 MR. CAFFREY: I personally think, Senator, that it's  
22 possible to build large facilities, dare I say it, I'll mention  
23 a facility that is of renewed interest at the national level and  
24 at the local level: the Auburn Dam.

25 While I can't take a position on that, and it's a  
26 question of economics in large part, I think that any large  
27 facility like that can be sited somewhere that is  
28 environmentally sensitive, and there can be mitigations that can



1 work. And the storage, the waters that are stored in these  
2 facilities, can be dedicated in such a way as to operate the  
3 facility that is beneficial to the environment as well as to the  
4 other beneficial uses.

5 I think an example of that is something that I'm very  
6 proud of that our Board participated in. Our Board granted  
7 water rights this year to Las Vaqueros Reservoir, which is in  
8 the Delta on Kellogg Creek. And it was supported by the  
9 Department of Fish and Game and the environmental community.  
10 It's a 100,000 acre foot reservoir that allows the capturing and  
11 storing of fresher water at certain times of heavy flows, and so  
12 that it can be used for human consumptive needs and freshening  
13 of the Delta later in the year.

14 So, there are ways of building facilities and  
15 managing the system so that it is beneficial to the environment  
16 and beneficial to human needs.

17 CHAIRMAN LOCKYER: A win-win approach.

18 MR. CAFFREY: It's expensive, but it can be done.

19 CHAIRMAN LOCKYER: Other Members? Senator Petris.

20 SENATOR PETRIS: On the salinity that was mentioned,  
21 there was a question regarding the Board's decision in '93 to no  
22 longer enforce regulations that applied, federal and state,  
23 which I don't understand. Can you comment on that?

24 MR. CAFFREY: I'm not sure I'm familiar with that,  
25 unless it's the --

26 CHAIRMAN LOCKYER: I think this is the old 1635.

27 MR. CAFFREY: Oh, yes. Decision 1630 was an  
28 emergency water rights decision which attempted to deal with the





1 problems of the Delta during the drought.

2 Before the -- the Board proposed that as a draft  
3 water rights decision. Before the Board could adopt it, the  
4 drought ended.

5 The federal government literally overreached the  
6 requirements of that plan through their invoking of the  
7 Endangered Species Act for certain species. So, the Board  
8 chose, at the request of Governor Wilson and Members of the  
9 Legislature as well, not to adopt that plan, but to move more to  
10 this consensus building approach. We now have --

11 CHAIRMAN LOCKYER: Pardon me, Mr. Caffrey.

12 Just so the record is straight, it was 1485.

13 MR. CAFFREY: Oh, I'm sorry.

14 CHAIRMAN LOCKYER: Which was refused enforcement.

15 MR. CAFFREY: I'm sorry.

16 There as a -- you must be referring, then, to the  
17 number of days of violation.

18 SENATOR PETRIS: Yes.

19 MR. CAFFREY: Yes, I am aware of that situation.

20 SENATOR PETRIS: There were 289 in '92.

21 MR. CAFFREY: Yes.

22 At the risk of using an analogy, because I don't mean  
23 to diminish the importance of those violations, but the Board  
24 did choose not to penalize the water projects for those  
25 violations.

26 The analogy I would use is that these were marginal  
27 violations in terms of the amount of water and the amount of  
28 salinity that occurred. And we had testimony from the



1 Department of Fish and Game at one point when we held hearings  
2 on these that they were -- they felt that there was no harm to  
3 any known -- any of the known species.

4 The approach that we took in not penalizing the water  
5 projects was that they were operating in a very difficult time  
6 of the drought, and trying to provide water to -- for human  
7 consumptive needs. We were not able, in the evidentiary record,  
8 to find any evidence of any harm to the environment, even though  
9 there were 289 violations.

10 Again, I cite an analogy which I didn't use, but I  
11 guess the best way to put it is, it was like going 57 miles an  
12 hour in a 55 zone. Now, that's not lawful, I realize. But they  
13 weren't the kinds of violations that were doing harm that we  
14 could find. So, we decided at that point, because of the  
15 drought conditions, to not penalize the Department at that  
16 point.

17 SENATOR PETRIS: For what period of time?

18 MR. CAFFREY: That was just for that group of  
19 instances, so that was just at that one time.

20 SENATOR PETRIS: It's not an ongoing --

21 MR. CAFFREY: Oh, no, no. That's not an ongoing at  
22 all. In fact, we've had some memorandums of understanding with  
23 the Department now, and we have a whole new process. When they  
24 begin to approach any time period where these violations may  
25 start to occur, or even getting close, they notify us right  
26 away, and we try to assist them in any way that we can.

27 It's very difficult, sometimes, to ramp these flows  
28 up and down when you're way up the tributary, managing a dam,





1 and the effects of them is, you know, 50 or 100 miles  
2 downstream.

3 But we do have a new and better way of managing this  
4 now because of the cooperation of the Department of Water  
5 Resources.

6 SENATOR PETRIS: Do you do it with computers?

7 MR. CAFFREY: I'm kind of -- at home and at work.

8 SENATOR PETRIS: Some of our computers haven't been  
9 working too well. That's why I asked you that.

10 MR. CAFFREY: Sometimes mine at home and at work  
11 doesn't work too well, either.

12 CHAIRMAN LOCKYER: I have a 12-year old.

13 MR. CAFFREY: I have a 13-year old.

14 CHAIRMAN LOCKYER: Let me talk with you for a moment  
15 just about kind of structural matters: the funding of the  
16 Board; the relationship of the regional boards to the State  
17 Board; the lack of uniformity of basic regulatory structure  
18 because of the nine-board configuration.

19 Let's start with funding. I think you've dropped  
20 from over half of the Board funding being general fund, to now  
21 down in the 10 percent neighborhood.

22 MR. CAFFREY: It's gone -- we've lost more than 30  
23 percent of our general fund because of the budget constraints;  
24 that's correct, Senator.

25 CHAIRMAN LOCKYER: Some have suggested that when the  
26 fee devices were instituted as a way to make up, to back-fill  
27 for lost revenue, that it tends to kind of Balcanize your  
28 program. That is, the people that pay a fee feel like, "Well,



1 70 different dedicated fund sources right now, Senator Lockyer.  
2 And we are very interested in designing something that would be  
3 a little less cumbersome, a little more responsive to both the  
4 regulatory needs and the economic needs of the public.

5 Certainly with your help, we might be able to bring  
6 something forward in the near future that would be constructive.

7 CHAIRMAN LOCKYER: Maybe we'll all learn this in a  
8 week, but have you had any success in persuading Finance that  
9 you ought to have greater reliance on general fund, rather than  
10 all the special levies?

11 MR. CAFFREY: At the risk of -- I don't want to  
12 violate executive privilege of the budget, but I think our  
13 budget will be adequate for the moment, but I think, hopefully,  
14 the future will allow us to take another look at the structure  
15 as we've just discussed, and perhaps get a little bit more  
16 efficient ways of funding our programs.

17 CHAIRMAN LOCKYER: Do you have work backlogs on  
18 regulatory permitting or anything?

19 MR. CAFFREY: We do have, yes; we do have some.  
20 We've been working with Cal-EPA and their staff to  
21 try and prioritize these backlogs.

22 CHAIRMAN LOCKYER: How long are they?

23 MR. CAFFREY: I apologize, Senator. I don't know  
24 right off the top.

25 CHAIRMAN LOCKYER: Ball park?

26 MR. CAFFREY: Well, the backlogs that we do have are  
27 not in the more sensitive areas. The NPDES permits that are  
28 part of the Clean Water Act, we're required to renew every five



1 years, so we're keeping on top of those.

2 So, anything that's of high priority, that is, where  
3 there is significant risk of pollution, we are dealing with  
4 those immediately. I don't believe we have a backlog in those  
5 at all.

6 There's some lesser areas where we know that, just by  
7 normal monitoring and the work of our regional boards, that we  
8 need to renew those permits just because it's the right thing to  
9 do, but that there is no problem per se there.

10 CHAIRMAN LOCKYER: The variety of local regulation,  
11 because of the regional nature of quality control, are there any  
12 areas where you would wish for greater uniformity?

13 MR. CAFFREY: I think so, Senator. In fact, we have  
14 just, as a part of the external program review that I mentioned,  
15 we've proposed to the Department of Personnel Administration,  
16 working with Cal-EPA, that we establish an office of statewide  
17 consistency within the Board.

18 Now, the way I define consistency is, the same  
19 treatment for the same kind of situation. And we think there  
20 are some opportunities there to give the kind of policy guidance  
21 to the regional boards --

22 CHAIRMAN LOCKYER: That's also the definition of  
23 justice.

24 MR. CAFFREY: Yes, sir.

25 CHAIRMAN LOCKYER: Similar treatment in similar  
26 circumstances.

27 MR. CAFFREY: Absolutely, Senator.

28 And so, that's what we are striving for, and I think





1 we have some areas where we will be able to make it easier for  
2 people who are trying to get permits to understand what can be  
3 expected, no matter what regional board they're appearing  
4 before.

5 CHAIRMAN LOCKYER: Other questions? Senator Ayala.

6 SENATOR AYALA: The Control Board has been meeting  
7 throughout the state, trying to come up with some standards,  
8 some water quality standards, for the Bay.

9 When should we expect that those standards will be  
10 made public? And if you do such standards, where will the water  
11 come from to meet those standards?

12 MR. CAFFREY: I think standards for the Bay has --  
13 the surrogate for that would be outflow. And I think that that  
14 is going to be a part of this ongoing process with the Bay-Delta  
15 process.

16 Outflow and measurements of increased outflow are  
17 going to be a part of that plan. And I would think that out of  
18 that, we would be able to standardize the impact that it's  
19 having on the Bay.

20 So, I see it, Senator, always as one very significant  
21 package. They're all inextricably linked. And to deal with one  
22 separately is probably not the way to go.

23 SENATOR AYALA: Do you expect the standards to be set  
24 in the near future?

25 MR. CAFFREY: Well, the water rights process that  
26 we're going to go through, and the water quality process,  
27 because of the requirements and the due process aspect of the  
28 adjudicatory proceeding, it could take as many as three years.



[Laughter.]

MR. CAFFREY: -- although it's an area that hasn't been discussed as much in the last two or three years as it was prior to that, there is more concentration now on the Delta estuary itself and the standards there.

I think of standards for the Bay in terms of outflow measurement. And I think the term that was used a few years ago was a flushing of the Bay.

But I think that whenever you set proper flow standards, and the tributaries that are most important to the Delta, like the San Joaquin and the Sacramento, that you have an impact. And when you manage the pumping in the Delta or from the Delta properly, you have an impact on the Bay that is very beneficial. So, I think they all go together.

SENATOR AYALA: I'll take the Chairman's admonition, and I won't pursue it any further.

CHAIRMAN LOCKYER: Oh, no. That's okay. I don't mind.

SENATOR PETRIS: On that point of standards for the Bay, we were also talking about quality standards, I assume.

MR. CAFFREY: That's absolutely correct.

SENATOR PETRIS: We've had a lot of warnings in the last two months.

MR. CAFFREY: I'm very aware of that.

SENATOR PETRIS: Kind of a strange warning. It says the Bay has very serious pollution problems, so if you catch fish in the Bay, don't eat it more than twice a month.

I don't know how you measure that. Maybe eat half





1 the fish, throw the other half out.

2 MR. CAFFREY: That, unfortunately, Senator, is the  
3 result of past practices in discharge. We know a lot more now.

4 The standards that we now have, the water quality  
5 standards that dischargers in the Bay are held to, do not result  
6 in that kind of what's called biocumulation in the fish.

7 SENATOR PETRIS: That'll take a while, though, to  
8 flush out or clean out; won't it?

9 MR. CAFFREY: That's right. The half life of these  
10 heavy metals, and some of these biphenals that are being found  
11 in certain species of fish is very long. So, the way you deal  
12 with that is to make sure through your monitoring that people  
13 are meeting the current standards of discharge and also by  
14 proper notification; you know, public health notifications to  
15 people who would be inclined to eat the fish.

16 So, it's an unfortunate situation, but over time it  
17 will dissipate.

18 SENATOR PETRIS: How much time?

19 MR. CAFFREY: I'm a little bit of a scientist, but  
20 I'm not that much of a half life measurer that I can tell you  
21 how much time.

22 It depends on which of the heavy metals you're  
23 talking about and which species of fish, but it could take  
24 years, several years.

25 SENATOR PETRIS: Are efforts being made to eliminate  
26 the heavy metal discharge?

27 MR. CAFFREY: Absolutely. We have --

28 SENATOR PETRIS: A lot of that's in the South Bay, I



1 understand.

2 MR. CAFFREY: That's right. And the State Water  
3 Board developed and adopted something called the Pollution  
4 Policy, Statewide Pollution Policy document, which is applied  
5 specifically to the Bay and the estuary. And the regional  
6 boards are required to follow those standards when they set  
7 water quality standards, and they have been doing that.

8 The key in all this goes back to what Senator Lockyer  
9 was talking about, and developing a more efficient funding  
10 structure for the Board so that we make sure that we have  
11 sufficient monitoring we need to see that the current discharges  
12 are meeting the current standards.

13 SENATOR PETRIS: You mentioned a 30 percent loss of  
14 the general fund part --

15 MR. CAFFREY: That's right.

16 SENATOR PETRIS: -- of your money is now gone.

17 What are the prospects for restoring as much of that  
18 as possible this coming year and next?

19 MR. CAFFREY: I guess I'd have to defer to the  
20 Department of Finance on that question, although we are doing  
21 other things.

22 SENATOR PETRIS: Are you banging on their door?

23 MR. CAFFREY: We are, yes, sir. But we're also doing  
24 other things in terms of becoming more internally efficient in  
25 our own organization and examining our fee structure, as Senator  
26 Lockyer was suggesting also to be more efficient so that,  
27 hopefully, we won't have to be that much of a drain on the  
28 general fund.



1           CHAIRMAN LOCKYER: As someone who represents a bit of  
2 the Silicon Valley, I think it's necessary to interject the hope  
3 that fairness in water quality enforcement with respect to the  
4 heavy metals would not simply burden the manufacturing  
5 discharges, which are a very, very small piece of the puzzle,  
6 unduly compared to all of the stuff coming out of the old copper  
7 mines running down the Mokelumne, and so on, that really is a  
8 greater source of this problem. Tricky and difficult to work  
9 out, but I assume you'll be fair.

10           MR. CAFFREY: We certainly will, Senator, and we are  
11 very aware of that problem.

12           CHAIRMAN LOCKYER: Well, the half life of the  
13 attention span in this Committee is about 22 minutes, and I note  
14 that there are some, Gordon Cologne, a long list of letters, who  
15 support you. There may be others in the room.

16           I would like to, perhaps, exercise some of the  
17 Chair's prerogative, who's looking at a long agenda, to just ask  
18 for a motion on the subject, if the Committee is prepared to  
19 vote on this matter.

20           SENATOR BEVERLY: Move we recommend confirmation.

21           CHAIRMAN LOCKYER: Senator Beverly has made the  
22 appropriate motion.

23           Any further discussion or questions?

24           Let's call the roll, please.

25           SECRETARY WEBB: Senator Ayala.

26           SENATOR AYALA: Aye.

27           SECRETARY WEBB: Ayala Aye. Senator Beverly.

28           SENATOR BEVERLY: Aye.





1 SECRETARY WEBB: Beverly Aye. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Lockyer.

6 CHAIRMAN LOCKYER: Aye.

7 SECRETARY WEBB: Five to zero.

8 CHAIRMAN LOCKYER: Thank you, sir.

9 MR. CAFFREY: Thank you very much, Senator.

10 CHAIRMAN LOCKYER: Good luck to you.

11 Mr. Carver is our next appointee. Mr. Carver, did  
12 you want to begin by any discussion at all of why you like this  
13 job?

14 MR. CARVER: I love the job. I've been at the job  
15 since January of 1993. I really do enjoy it. It's like doing  
16 arbitration cases, basically, that I used to do when I was  
17 president of the Machinists' Union.

18 And I have, I think, probably a longer statement than  
19 you folks want to hear, but if you want to, I can go ahead and  
20 read it and eliminate a couple of the paragraphs.

21 But at any rate, the job is a good job. I'm in the  
22 learning process now. We have a really, really good Board. The  
23 Chairman of our Board is fantastic. It's probably one of the  
24 better organized boards in the whole state government. It runs  
25 perfectly, believe me. And I'm just proud to be a part of it.

26 Let me give you my background a little bit, if I may.

27 CHAIRMAN LOCKYER: Farmworker way back.

28 MR. CARVER: Well, that's interesting. I kind of



1 like this. This is kind of relaxing.

2 I was kind of concerned about coming before the  
3 Committee because I didn't know how it was going to be, it being  
4 the first time.

5 Yeah, as a farmworker, you know, when I was growing  
6 up as a child -- I have three brothers and two sisters -- we  
7 used to -- our parents used to take us out of school to pull  
8 broom corn, pick cotton, work in the wheat fields, and do other  
9 jobs. And for the ladies here, I apologize, but even slopping  
10 hogs, if you know what that means. So, I'm very attuned to the  
11 health and safety, and how important it is not only to the  
12 farmworkers, but the workers of California as a whole.

13 I think I'd be a very good choice for the Board.

14 CHAIRMAN LOCKYER: How many members were in your  
15 lodge when you were at the union? This was Lockheed; wasn't it?

16 MR. CARVER: Well, we had Lockheed; we had Webber  
17 Aircraft; we had Hydraulic Research Techtron. We had about  
18 9,000 members when I was there.

19 CHAIRMAN LOCKYER: What is it down to today?

20 MR. CARVER: Oh, Lord, Senator. It's down to about  
21 1200. Of course, 1200, it's an aerospace --

22 CHAIRMAN LOCKYER: The aerospace industry was hit  
23 real hard.

24 MR. CARVER: Yeah, and we really, really took a hit.

25 We knew the Cold War was coming to an end, but there  
26 wasn't much we could do about it. It came too fast.

27 CHAIRMAN LOCKYER: Let me defer to Members of the  
28 Committee first, though I do have a couple of things that I'd





1 like to ask about. I'll first ask Members if they had anything  
2 specific.

3 I'd really like you to talk --

4 MR. CARVER: Don't give me a hard question.

5 CHAIRMAN LOCKYER: Capri Manufacturing. As I  
6 understand what happened, and so you may need to correct my  
7 understanding, the question before your Board was whether use of  
8 a carcinogen which, if there are violations, the law requires  
9 them to be characterized as serious violations --

10 MR. CARVER: That's true.

11 CHAIRMAN LOCKYER: -- and the violations that took  
12 place weren't the actual substance, but they were related to  
13 training programs and other things. And the Board decided that  
14 that wasn't use.

15 Was that a unanimous decision?

16 MR. CARVER: Yes.

17 CHAIRMAN LOCKYER: Have I misstated it?

18 MR. CARVER: No. I'm trying to recall the case  
19 itself. We've had about, since I've been there, over 3,000  
20 appeal cases.

21 CHAIRMAN LOCKYER: I don't know when this was.

22 MR. CARVER: There were two cases similar to that. I  
23 think Capri was one, and De Silva was another. I don't want to  
24 get those mixed up. One of them -- and I don't want to mess up.

25 CHAIRMAN LOCKYER: What was De Silva?

26 MR. CARVER: The De Silva case was how to define the  
27 use of a carcinogen.

28 CHAIRMAN LOCKYER: This seems to be the same idea.



1 MR. CARVER: Basically the same, I think. I can't  
2 really recall Capri, because De Silva came a little after that,  
3 I believe.

4 But in that instance, there was a tank with some gas  
5 that they used to clean some materials. And it was leaking a  
6 bit. But the hygienist at the OSHA division decided that that  
7 gas that was leaking dissipated within six inches from the  
8 canister. And the two ladies that were filing suit worked --  
9 one lady worked in an office quite a ways away from that area,  
10 and the other lady came in intermittently, maybe to have breaks  
11 and this kind of thing.

12 We decided that that was not a use of a carcinogen.

13 CHAIRMAN LOCKYER: Was that unanimous?

14 MR. CARVER: It was. Every -- since I've been there,  
15 every case has been unanimous. And I might add, if I may,  
16 Senator --

17 CHAIRMAN LOCKYER: Every one has been?

18 MR. CARVER: Yeah. I might add, we have a heck of a  
19 debate. We study those cases quite extensively, and I wish I  
20 could recall the Capri case. I recall the De Silva.

21 CHAIRMAN LOCKYER: It's the same idea.

22 MR. CARVER: Same idea, yeah, but it's been  
23 unanimous. We've had discussions, pretty good discussions.

24 CHAIRMAN LOCKYER: Well, it may be that the problem  
25 really is with the statute that we wrote, not the way in which  
26 you chose to implement it. Use if one of those tricky words.

27 MR. CARVER: We totally rely on --

28 CHAIRMAN LOCKYER: Every one has been unanimous in



1 the time you've been there, as you recall?

2 MR. CARVER: Yes.

3 CHAIRMAN LOCKYER: Other Members that wanted to pop  
4 in here?

5 What are the maximum penalties you can levy?

6 MR. CARVER: Gee, that's hard. I don't really know.  
7 We've levied -- of course, we don't levy penalties. That comes  
8 with Cal-OSHA. The only thing we do is look at the appeal  
9 cases.

10 CHAIRMAN LOCKYER: You can dismiss it or reduce it.

11 MR. CARVER: Yeah, according to the director's  
12 orders, you know, passed by the Legislature.

13 CHAIRMAN LOCKYER: But, I mean, you can hear an  
14 appeal and dismiss the penalty that was levied.

15 MR. CARVER: We could, yes.

16 CHAIRMAN LOCKYER: In fact, at least it looks like a  
17 lot of that has taken place.

18 MR. CARVER: Well, I don't think a lot of it has  
19 taken place. I think, and I might be a little off, but I think  
20 about 80 percent of it, or maybe 10 percent of it has taken  
21 place.

22 CHAIRMAN LOCKYER: Where they reduced or dismiss?

23 MR. CARVER: Oh, reduce?

24 CHAIRMAN LOCKYER: Reduce or dismiss.

25 MR. CARVER: Dismiss, maybe, about 10 percent.  
26 Reduced, probably about 50 percent.

27 CHAIRMAN LOCKYER: Does there seem to be a consistent  
28 reason for reductions?





1 MR. CARVER: Oh, sure. We get certain variances  
2 because of the number of people working in that facility, like  
3 five or ten people; they get a reduction. And if they have a  
4 good IP program, safety program going, then they get a reduction  
5 for that. And there are a litany of reasons there could be  
6 reductions, and that was passed by the Legislature and part of  
7 the director's orders.

8 CHAIRMAN LOCKYER: Other Members?

9 MS. DONALDSON: Senator, if I may, I'm Chairman of  
10 the Board.

11 CHAIRMAN LOCKYER: Yes, did you want to come forward?

12 MS. DONALDSON: I would state that Bryan is a very  
13 good labor member of our Board. We've had a good year, I  
14 believe, and we've had a lot of appeal, and we've had to attack  
15 them from very different angles.

16 I think I certainly support Bryan in his  
17 confirmation.

18 I would add, and the reason I raised my hand a little  
19 bit ago is the Capri case was considerably before Bryan's time.

20 CHAIRMAN LOCKYER: He wasn't there at the time?

21 MS. DONALDSON: No, he was not there.

22 CHAIRMAN LOCKYER: Same idea, though, I guess?

23 MS. DONALDSON: Yes, right.

24 CHAIRMAN LOCKYER: You're Ms. Donaldson, correct, for  
25 the record?

26 MS. DONALDSON: Right.

27 CHAIRMAN LOCKYER: But the same issue?

28 MS. DONALDSON: Same issue, right. And there are



1 certain things the Division can do to prove whether or not it's  
2 a use. And often times, the Division simply doesn't prove it,  
3 and that's something we have to look at from our standpoint.

4 CHAIRMAN LOCKYER: Mr. Carver, one of the more common  
5 to the building trade work site circumstance than the industrial  
6 settings, but very often there are multiple employers, subs or  
7 whatever, all in the same work site. And I guess there is a  
8 dispute occasionally about someone else's practices caused  
9 injury to employees of one of the other groups, not their own,  
10 but to someone. You know, the roofers hurt the plumbers, or  
11 whatever.

12 Have you seen those kinds of disputes come before you  
13 yet in appeals situations?

14 MR. CARVER: Yes, I've seen, I think, two, as I  
15 recall, or maybe one.

16 CHAIRMAN LOCKYER: Not a real common --

17 MR. CARVER: No, not a whole lot.

18 CHAIRMAN LOCKYER: Anything wrong with the law there?  
19 do we need to fix it, or does it seem to be working okay?

20 MR. CARVER: Oh, it seems to be working very well.  
21 Of course, we've only had one or two of them.

22 CHAIRMAN LOCKYER: It's hard to say out of a thousand  
23 or more you've --

24 MR. CARVER: Well, about 3,000 or --

25 MS. DONALDSON: There were 3400.

26 CHAIRMAN LOCKYER: While you've been there.

27 MR. CARVER: Since I've been there.

28 CHAIRMAN LOCKYER: All right.





1 Other questions, Members? What's the pleasure of the  
2 Committee?

3 Is there opposition or support present? We're  
4 unaware of any opposition.

5 SENATOR LEWIS: Move confirmation.

6 CHAIRMAN LOCKYER: We have a motion by Senator Lewis.  
7 Call the roll.

8 SECRETARY WEBB: Senator Ayala.

9 SENATOR AYALA: Aye.

10 SECRETARY WEBB: Ayala Aye. Senator Beverly.

11 SENATOR BEVERLY: Aye.

12 SECRETARY WEBB: Beverly Aye. Senator Lewis.

13 SENATOR LEWIS: Aye.

14 SECRETARY WEBB: Lewis Aye. Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB: Petris Aye. Senator Lockyer.

17 CHAIRMAN LOCKYER: Aye.

18 SECRETARY WEBB: Five to zero.

19 MR. CARVER: I wish to thank the Committee and Nancy  
20 for her help.

21 CHAIRMAN LOCKYER: Thank you, sir.

22 Mr. Priolo, why don't you come up for a moment. I  
23 think it'll be a little quicker, perhaps, than the other three  
24 remaining.

25 Paul Priolo we all know. At least two of us served  
26 with you together in the Assembly, and others in the Senate  
27 while you were there, Mr. Priolo.

28 Did you want to begin with any opening comment at



1 all?

2 MR. PRIOLO: Not unless you want me to.

3 Well, Senator, I don't mean to be facetious. I was  
4 pleased when the Governor's people selected me to serve on the  
5 Community College Board. I'm a product of the community  
6 college; although, in those days it was called junior college,  
7 San Mateo Junior College.

8 My wife, who is an immigrant from Germany, is a  
9 product of Sac. State where she started out with English as a  
10 Second Language, and was just another example of a large menu  
11 that is offered by the community colleges.

12 People who are trying to get into university but  
13 don't have grades for it, like I, was my situation, fortunately  
14 I was able to improve my grades and get to the University of  
15 California. And my wife, with her language barriers that she  
16 had encountered when she moved here, and of course, it's been  
17 expanded tremendously, and the services that are provided by the  
18 community colleges.

19 So, it's a group with which one should be proud to be  
20 associated with.

21 Certainly, the Members of the Legislature who have  
22 such influence over the community college system should be very  
23 proud of the system that they've created.

24 CHAIRMAN LOCKYER: Mr. Priolo, one of the comments  
25 you sometimes hear is, it's a little bit like the Water Board  
26 that we were talking about a while ago, is the sort of local  
27 control in policies so significant and such a historical  
28 practice of deferring to local, in this instance, community



1 college districts, that it could occasionally frustrate your  
2 efforts as the statewide body to effectuate policy changes for  
3 the whole state.

4 I'd like you to comment on two things. One is, how  
5 does that feel as a person who's been in this position, and do  
6 you have any thoughts about how it should evolve?

7 And secondly, there is the suggestion made that,  
8 partly because of that frustration to deal with the locals, that  
9 maybe you micro manage the Chancellor's Office, where there's  
10 more direct influence over their operations.

11 What comments could you help me with?

12 MR. PRIOLO: Your question indicates you have a  
13 considerable insight to what's going on in the community college  
14 system.

15 Firstly, relating to the local control, I think  
16 that's good. I mean after all, they're known as community  
17 colleges, and the local boards do have the control over the  
18 administration of their colleges. And I think that's right.  
19 They're there to serve the community, the needs of that  
20 community, be it the community work force or providing the  
21 curriculum that is necessary to make the motor move, make it  
22 run, in that community.

23 As far as our ability to influence at the state  
24 level, I haven't been on the Board very long. I haven't felt  
25 any frustration in dealing with the local boards. I have felt  
26 some frustration with the -- and I'm not sure frustration's the  
27 word; maybe just some reaction to the effort to micro manage the  
28 Chancellor's Office.





1 I happen to think we have a fine Chancellor. I'm not  
2 just saying that because he's sitting behind, because I don't  
3 gain anything by having said that. He does an outstanding job.

4 I've always believed that you don't micro manage from  
5 a governing body. You allow people to do their job. And if  
6 they don't do it correctly, you move in and you do something  
7 about it, and keep an eye on what's going on.

8 That's the way I would handle it were I the person to  
9 make the decision.

10 But it seems like it's not too important function of  
11 a 50-member Board if they don't have anything better to do, and  
12 don't have, really a lot more to do. And the Legislature has  
13 not given that Board much authority.

14 CHAIRMAN LOCKYER: What should we do about that?

15 MR. PRIOLO: Based on my limited experience thus far  
16 on the Board, I don't think you should do anything about it. I  
17 think anything to further strengthen the local boards is  
18 appropriate.

19 I think it's the nature of the appointments of  
20 whichever governor as to how a board is going to behave.

21 CHAIRMAN LOCKYER: Questions from Members? Senator  
22 Petris.

23 SENATOR PETRIS: Some of us have been concerned about  
24 the real squeeze on the students in the form of fees.

25 You know, when the JC system started, there weren't  
26 any fees.

27 MR. PRIOLO: Right.

28 SENATOR PETRIS: And it really became the model of



1 the nation. And at the same time, it attracted very good  
2 teachers and professors, and so forth.

3 In the past two or three years, we've had a beginning  
4 of fees, where we had the \$50 minimum in prior years. Now we're  
5 going at \$13 a unit. And we've seen the largest drop in  
6 enrollment of any system in the country mostly as a result of  
7 that. There are other reasons, too.

8 Has there been concern expressed on the Board about  
9 turning that around, particularly in its communications with the  
10 Governor?

11 MR. PRIOLO: There's been considerable expression. I  
12 don't know anyone on the Board that has expressed any interest  
13 in raising the fees, or any support for any proposals to raise  
14 the fees.

15 The attitude is that those community colleges are  
16 supposed to be there to serve anyone and everyone in the state  
17 who desires to attend. We don't have any limit on who may  
18 attend, but the thing that does limit it, of course, can be the  
19 fees, practically speaking.

20 There is effort afoot to expand the role of  
21 corporations to pay for their -- pay for curriculum for its  
22 students. Very often, they are the benefactors of the system by  
23 having their employees participate in the system or to draw from  
24 the system, and that perhaps they can share a greater load. And  
25 I think they're receptive to that.

26 That isn't anything that, quite frankly, originated  
27 with the Board. I think it's originated with businesses  
28 themselves. I think they would find it cheaper than having to





1 do what the phone company does, train their people when their  
2 hire them because they've come out of a school system that  
3 hasn't provided sufficient education to go out and do the job.

4 SENATOR PETRIS: I'm wondering. There's a lot of  
5 talk now about the economy is starting to improve, and certain  
6 policies that are being recommended by the Governor based on  
7 prediction of an improved economy; we can afford things.

8 I'm wondering if there's anybody among your group  
9 monitoring that in the hope of not only resisting more fee  
10 increases, but rolling them back?

11 MR. PRIOLO: You know, we don't set the fees.

12 SENATOR PETRIS: I know, but I mean in terms of  
13 recommendation.

14 MR. PRIOLO: Yes, well --

15 SENATOR PETRIS: If the recommendation is made to us,  
16 it would have a lot of weight, I would think.

17 MR. PRIOLO: Practically speaking, I suspect if the  
18 Governor were to propose a number, he has 15 appointees on the  
19 Board that he put there, I suspect there's going to be some  
20 votes of support for him.

21 Do I sense any feeling among the members of the Board  
22 that they are supportive of the concept? No, absent of a  
23 request from the Governor, I suspect that there would be no  
24 support for it.

25 SENATOR PETRIS: For what?

26 MR. PRIOLO: For an increase.

27 SENATOR PETRIS: What about a reduction?

28 MR. PRIOLO: That's up to you. Yes, the answer is



1 yes, yes, yes. We would be delighted with a reduction, but  
2 that's a decision that would have to be made here.

3 SENATOR PETRIS: You know, I've asked this question  
4 of Cal. State Board members, too, and unfortunately I get the  
5 same answer: it's up to you. Which is okay, I suppose, since  
6 we do have the ultimate policy making responsibility, but some  
7 of us like to look to the Board members themselves who are in  
8 touch with the system a lot more than we are and more in a  
9 hands-on policy.

10 It would be helpful to us if, based on what you see  
11 there, and your experience, and your interaction with the other  
12 members and community, that you could recommend things to us.  
13 It doesn't mean that we necessarily would follow every single  
14 time, but I personally would find it very helpful.

15 To that extent, I'm wondering whether, because of the  
16 outcries, and because of this huge drop in enrollment -- I think  
17 it was 155,000 students -- that there would be some concern  
18 among the members to initiate some kind of activity by  
19 recommendation only. I know you don't have the decision, but if  
20 you recommended to the Governor and to us that we do this or  
21 that, I think you'd find we'd be paying very close attention to  
22 it.

23 So, I would like to urge you to see, if you agree  
24 that we ought to try to reduce those fees as soon as we can, as  
25 soon as the economy and our resources permit it, that perhaps  
26 the first initiative coming out of the Board itself would make  
27 it easier for us to do it.

28 MR. PRIOLO: Yes, sir, I agree.



1           SENATOR PETRIS: I guess it has to go on the role of  
2 the Board. I think too many members view it at a distance from  
3 us.

4           And I think an important part of the role of a board  
5 is to kind of advise us and recommend to us. And even when we  
6 have legislation that you don't like, some of the members make  
7 their voices heard. They say, "We don't like what you're  
8 doing."

9           But we ought to know what you do like, too, and get  
10 some help from you in generating improved policy.

11          MR. PRIOLO: I tried to throw the potato back at you,  
12 and you threw it back to me.

13          CHAIRMAN LOCKYER: There are other forums this needs  
14 to be discussed in, but there's a lot of discussion about tax  
15 cuts. This is an area in which there was more than a 100  
16 percent tax increase during the duration of this current  
17 Governor.

18          It just seems to me that increases of that sort ought  
19 to be rolled back before we cut some of the taxes that have been  
20 in place for a number of years.

21          So, I think we're all in agreement. It's a question  
22 of who has the ability, will, and power to make the change.  
23 We're just hoping you'll do your best, as you've done for 20  
24 years.

25          MR. PRIOLO: I promise I will.

26          CHAIRMAN LOCKYER: Senator Lewis.

27          SENATOR LEWIS: Out of the 155,000 decline in  
28 enrollment over the last couple of years, has the Board





1 commissioned any surveys of that pool of former students to  
2 determine what percentage of them left the system because of the  
3 fee increases?

4 MR. PRIOLO: I'll have to defer that to Chancellor  
5 Mertes.

6 MR. MERTES: The answer is yes. And the major  
7 population that was hit were people probably entering higher ed  
8 for the first time, particularly ESLs and in remedial language  
9 situations in English and mathematics.

10 SENATOR LEWIS: What was the percentage that you  
11 believe left the system or didn't replace exiting students, that  
12 it might be because of the fee increases?

13 MR. MERTES: I'm missing the question?

14 SENATOR LEWIS: Of the 155,000 decline in enrollment,  
15 what percentage of that would you estimate could be attributable  
16 to the increase in fees?

17 MR. MERTES: That one is a difficult one, because  
18 fees typically, when you talk to students and you question  
19 students, the fees are part of the physical package of books,  
20 transportation. Our population is 27 years of age. Many of  
21 them have child care problems, and they talk about the physical  
22 package. Any part of that that starts to go up, and fees is the  
23 part that has gone up, is that bit that just teeters, and they  
24 back away.

25 It's -- the fee as a stand-alone, you can't simply  
26 measure because many of our students are very, very low income  
27 students. They're just on the edge. Child care is very real  
28 for them. Transportation is very real for them. They're in low



1 paying jobs, often times part-time jobs. A change of job  
2 schedule will cause them to drop out simply because they've got  
3 to have that money to survive.

4 We have not found an effective way of isolating the  
5 fees alone and say that's the direct cause and effect. We can  
6 certainly show that every time the fees have gone up, there has  
7 been a major drop in the student population.

8 SENATOR LEWIS: Is possibly one of the answers, and I  
9 don't know if you tested this in your studies or surveys, that  
10 for the last couple of years, we had domestic out-migration out  
11 of the state? And certainly, one of the ages groups that would  
12 be most likely to utilize the community colleges would be a very  
13 big part of that equation.

14 MR. MERTES: I don't believe that's a significant  
15 factor for the decline for our student population.

16 Our population tends to be centered right in the  
17 district that's served. They don't move around very much,  
18 around the state. They stay in that geographical area.

19 SENATOR LEWIS: Someone was leaving the State of  
20 California, then.

21 CHAIRMAN LOCKYER: Senator Ayala.

22 SENATOR AYALA: As the fees went up from \$6 to \$13 in  
23 the last, what, three or four years, and we're told that for  
24 every dollar that you raise the fees, you lose 100,000 students,  
25 has that affected California's colleges in a way that it should?  
26 And who decides, is it the Legislature or the Board of Regents,  
27 or the local boards decide the cost of fees.

28 And sometimes to that they add a health plan, and





1 parking, and all this other stuff besides the fee. The students  
2 just can't afford it, some of the students.

3 You determines? Is it you folks determine what the  
4 college will --

5 MR. PRIOLO: In the final analysis, it's the  
6 Governor's signature on the budget.

7 SENATOR AYALA: It's in the budget bill.

8 MR. PRIOLO: But as I think Senator Petris is saying,  
9 a lot of people are involved in that decision making process.  
10 And be it the Legislature, the local boards, the State Board, we  
11 do actively, as a state board, have a lobbyist who lobbies on  
12 behalf of legislation here before the Legislature. And I'm not  
13 aware of his lobbying for increased fees. I don't think it  
14 would be approved.

15 SENATOR AYALA: Do the local boards have the  
16 authority to add to the \$13 per unit?

17 MR. PRIOLO: I don't think so, no.

18 SENATOR AYALA: It has to be done from whom?

19 MR. MERTES: From the Legislature.

20 SENATOR AYALA: The Legislature determines what they  
21 can charge for parking and for health plan?

22 MR. MERTES: You have several areas. Health, parking  
23 are two examples that you authorize the local districts to levy  
24 a fee up to a certain level. Then the local districts can levy  
25 a fee or not levy a fee, but you set the maximum.

26 SENATOR AYALA: Can they add to that through an  
27 election of the district electorate?

28 MR. MERTES: No.



1 SENATOR AYALA: That's it?

2 MR. MERTES: That's it.

3 SENATOR AYALA: Thank you.

4 CHAIRMAN LOCKYER: What's the pleasure of the  
5 Committee?

6 SENATOR BEVERLY: I'll be pleased to move we  
7 recommend confirmation.

8 MR. PRIOLO: And I'm pleased, thank you.

9 CHAIRMAN LOCKYER: Is there anyone present who would  
10 wish to add either support or opposition? I think we're looking  
11 at a 5-0 vote here.

12 We have a motion before us. Let's call the roll.

13 SECRETARY WEBB: Senator Ayala.

14 SENATOR AYALA: Aye.

15 SECRETARY WEBB: Ayala Aye. Senator Beverly.

16 SENATOR BEVERLY: Aye.

17 SECRETARY WEBB: Beverly Aye. Senator Lewis.

18 SENATOR LEWIS: Aye.

19 SECRETARY WEBB: Lewis Aye. Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Petris Aye. Senator Lockyer.

22 CHAIRMAN LOCKYER: Aye.

23 SECRETARY WEBB: Five to zero.

24 CHAIRMAN LOCKYER: Mr. Priolo, I'm delighted to  
25 participate in conferring just honors on man who --

26 MR. PRIOLO: Thank you, Senator. And if we ever have  
27 a community college in Malibu, you can be sure that you'll be  
28 invited down for a weekend.



1 CHAIRMAN LOCKYER: All right.

2 Mr. Malkasian, good afternoon sir.

3 MR. MALKASIAN: Good afternoon.

4 CHAIRMAN LOCKYER: Do you want to start by commenting  
5 at all on what you're doing on this Board, and so on?

6 MR. MALKASIAN: I can make a brief statement, if I  
7 may.

8 CHAIRMAN LOCKYER: Sure.

9 MR. MALKASIAN: Mr. Chairman and Members of the  
10 Board, my name is Bill Malkasian. If you notice a slight  
11 brogue, I'm from -- originally from Boston; migrated to  
12 California, Sacramento in particular.

13 And I've been in public education for 30-40 years,  
14 something like that, and I'm still, after I retired in '83.  
15 I've been a principal of a junior high and a high school here in  
16 Sacramento, and I'm now the Director of the International  
17 Academy at Sacramento State University, which is a program with  
18 the county, Sacramento County, and the University. And we deal  
19 with high achieving students from the Sacramento area,  
20 Sacramento and El Dorado Counties, and we deal in economics,  
21 foreign language of the Asian countries, and economics of those  
22 countries, and their social structures.

23 What am I doing, why do I want to be --

24 CHAIRMAN LOCKYER: Pardon me, but are they students  
25 at Sac. State?

26 MR. MALKASIAN: No, these are high achieving high  
27 school students. We take freshmen, sophomores, juniors, seniors  
28 and freshmen college students.





1 CHAIRMAN LOCKYER: You have some after-school type  
2 programs?

3 MR. MALKASIAN: No, no. This was a summer program,  
4 eight-week summer program dealing with Chinese, Japanese,  
5 Korean, Russian and Spanish, advanced Spanish.

6 People ask me why do I want to be on the Board after  
7 serving so long in public education. I was going to bring my  
8 eight grandkids here, from eight years old down to three, but I  
9 didn't think you'd appreciate that. A couple of them are from  
10 your area, Senator Lockyer, and a couple are from Senator  
11 Petris's area.

12 And by the way, Senator Petris, Merry Christmas  
13 coming up.

14 SENATOR PETRIS: Yes, thanks.

15 MR. MALKASIAN: So, I really am interested and have  
16 been interested in the education of youngsters in our state, and  
17 that's why I'm on the Board. And that's just not a statement or  
18 a quote just to be -- sound good.

19 I'll field any question that you might have.

20 CHAIRMAN LOCKYER: Questions from Members?

21 MR. MALKASIAN: Oh, by the way also, I've been in  
22 touch -- Ms. Eastin has been in touch with me four or five  
23 different times, on her car phone, on her phone from her office,  
24 on her phone from home. And I frankly, I think that Ms. Eastin  
25 is going to do an excellent job. I think since she's been in  
26 public education, and understands what people are going through,  
27 and also being part of the Legislature, I think that's a big  
28 asset for our program. So, we're really pleased with Ms.



1 Eastin.

2 CHAIRMAN LOCKYER: If we could, could we start there,  
3 just the structural and institutional arrangement or tension  
4 between the elected Superintendent and the Board. That's been  
5 troublesome in past years.

6 It does appear that everybody's making an effort to  
7 be more cooperative.

8 MR. MALKASIAN: Right.

9 CHAIRMAN LOCKYER: What's your attitude about that  
10 relationship between the two?

11 MR. MALKASIAN: I got you.

12 The relationship between the Board and the  
13 Superintendent, or acting Superintendent, which was Bill Dawson,  
14 has been excellent. I think, and as I told Ms. Eastin, that the  
15 Board will cooperate with her 100 percent. I see no problem  
16 there.

17 It's a good Board, and their primary interest is the  
18 educational process in the State of California. They want to  
19 see the state get back on track where it used to be years ago.  
20 We had the best system in the United States, and even today we  
21 have a pretty good system. It needs a boost. I could use  
22 another term, but there's ladies present. They need a kick in  
23 the butt, is what it needs.

24 We need some changes to motivate the process. We  
25 have some outstanding students and outstanding teachers in this  
26 state, and administrators, but we need to get it moving. Right  
27 now, it's --

28 CHAIRMAN LOCKYER: What causes the problem?



1 MR. MALKASIAN: I think the problem, and my feeling  
2 is, that we ought to give local control -- we ought to have  
3 local control.

4 What we ought to do is also make the site  
5 administrators responsible for their schools. And if they can't  
6 produce, then we find people who can produce.

7 You can't give a manager, assign him a task, and not  
8 let him have the full responsibility of what's happening in that  
9 particular site.

10 And I can verify that because I took over a school.  
11 And it seemed like my job always was, when there was a problem,  
12 call in Bill Malkasian. And that happened here in Sacramento;  
13 that happened in Castlemont High School when there were  
14 problems.

15 So, what I asked the Superintendent to do, I said,  
16 "Look, I'll take the job providing I have to march to a  
17 different drummer 'til I get this place back together." I have  
18 to do my own hiring, or whatever. I will be responsible,  
19 operate within the policy of the board, naturally. And so, he  
20 did give me that responsibility. Consequently, we straightened  
21 out a couple of schools that were in very bad trouble. We had,  
22 you name it: drugs, guns, the whole myriad. And we were able  
23 to do that. And when I say "we", with some great teachers, and  
24 there are some great teachers out there.

25 CHAIRMAN LOCKYER: What percentage?

26 MR. MALKASIAN: What percentage do I think? It would  
27 be a guess.

28 CHAIRMAN LOCKYER: Just your guess.





1 MR. MALKASIAN: I would say that 90 percent of the  
2 teachers out there are great, and that's just a guess.

3 In my particular institutions, I had -- every one of  
4 them were excellent teachers. They cared about what they were  
5 doing. They were interested in the kids. The coaches worked  
6 hard with youngsters, spending their own money, the whole thing.

7 That's why it bothers me when I see people  
8 criticizing teachers. We do have some apples out there that are  
9 not doing the job, and so we focus in on that. Hopefully,  
10 that'll change.

11 CHAIRMAN LOCKYER: It sounded like your first thought  
12 about how to make the system better, kick it in the fanny, or  
13 whatever, is more school site --

14 MR. MALKASIAN: Control.

15 CHAIRMAN LOCKYER: -- control. Is that your first  
16 thought about that?

17 MR. MALKASIAN: Yes, yes. I believe in that.

18 CHAIRMAN LOCKYER: There's currently, I guess, some  
19 discussion with respect to bilingual education, or ESL, and so  
20 on. The appropriate role of either local policy versus the  
21 State Board holding them accountable, isn't this coming up soon?

22 MR. MALKASIAN: Yes.

23 CHAIRMAN LOCKYER: What's going on?

24 MR. MALKASIAN: I think that the local people should  
25 have some leeway on how they're going to do this, but I think  
26 they should be accountable to the State Department of Education,  
27 and then in turn, the Board function with the State Department  
28 of Education.



1           And we need those types of programs, you know. I  
2 hear all kinds of problems in the programs.

3           CHAIRMAN LOCKYER: Some school district got beat up  
4 recently before you.

5           MR. MALKASIAN: Yes, Stockton was a good example.  
6 They don't have people qualified to teach the program. And they  
7 have a diverse population. It's unbelievable how many different  
8 types of languages are spoken in certain areas. I think they  
9 say 129 in the state; 129 different dialects. That's tough to  
10 find people who can teach those kids.

11           But we must find people to teach. It's easy to take  
12 kindergarten to fourth grade and teach those kids English. But  
13 what happens to the kids in the upper levels that come in that  
14 don't speak English at all? They must -- they must learn  
15 history, science, math and so forth. So, we have to find ways  
16 of teaching those kids, and getting them into the mainstream so  
17 that they function.

18           I'm a product. You know, I'm from Boston. My folks  
19 were immigrants. We lived in what they called ghettos in those  
20 days, where the French lived in one area, the Italians lived in  
21 another, the English lived in another. Of course, the Irish  
22 lived all over Boston. When I was growing up, it was 90 percent  
23 Irish, and they used to call me "O'Malkasian".

24           But my father used to tell me, you know, "When you're  
25 out in the streets playing with your friends, speak English.  
26 When you're in the house, you speak Armenian." And so, that's  
27 the policy I followed, and consequently, English was always my  
28 toughest language in school, and I ended up at Boston Latin High



1 School, so you can figure out, you know, what happened.

2 CHAIRMAN LOCKYER: Jumping back to where we began,  
3 next week's agenda, or the week after, whenever your next  
4 meeting is coming up --

5 MR. MALKASIAN: Next week.

6 CHAIRMAN LOCKYER: There's an item with respect to  
7 the Deputy Superintendents, and who they're going to be, or how  
8 they're going to get filled, or whatever.

9 Has that been worked out yet between the Board and  
10 the new Superintendent?

11 MR. MALKASIAN: I don't know if it has or has not,  
12 but I don't anticipate a problem.

13 I think, if I were the Superintendent, I'd want to  
14 work with people that I wanted as my lieutenants. And I don't  
15 see a problem, frankly.

16 CHAIRMAN LOCKYER: Do you think she should be given  
17 considerable latitude?

18 MR. MALKASIAN: I think so. We're not -- she's going  
19 to -- those are the lieutenants that she's going to be working.  
20 She must have confidence in those people and trust. And that's  
21 -- you know, for her to function properly, she needs that  
22 latitude. And I have no problem.

23 I doubt very much if the rest of the Board would be  
24 in her way on that function at all. I'd probably lobby for her.

25 CHAIRMAN LOCKYER: Senator Ayala.

26 SENATOR AYALA: On that point that you raise about  
27 the relationship between the Superintendent and the members of  
28 the Board, I think the state does it completely





1 counter-productive, as far as I'm concerned.

2 At the local level, you elect the board members; they  
3 in turn select a superintendent that they can work with. And if  
4 that individual doesn't do the job, they get rid of him.

5 MR. MALKASIAN: Right.

6 SENATOR AYALA: Here, we select the Superintendent,  
7 and nominate or put people into Board positions which are  
8 appointed, appointed positions, to tell the one that's been  
9 elected by the people, statewide, what it should be.

10 I think it's not the way it should be.

11 MR. MALKASIAN: I don't want to throw the ball back  
12 into your court, but isn't that where the Legislature comes in,  
13 to straighten that out?

14 SENATOR AYALA: You're correct, but we don't have the  
15 courage to do it. It's been tried before, and it doesn't go  
16 very far. The fact that we should have the Superintendent  
17 elected --

18 MR. MALKASIAN: I agree with you. I'm not debating  
19 that.

20 CHAIRMAN LOCKYER: The only argument I would make,  
21 and I agree with Senator Ayala, this is sort of an odd way to do  
22 it, it may be that we elect too many things generally in this  
23 state, and that's more at the local level than statewide.

24 But one argument for the Board format -- and I don't  
25 think we could elect the members of the State School Board; that  
26 wouldn't make any sense, so I guess you could, theoretically,  
27 but it'd be an odd structure -- but at least some of the  
28 diversity of the state is reflected in multi-member rather than



1 none person.

2 MR. MALKASIAN: Right.

3 CHAIRMAN LOCKYER: So, that's the strength of it.

4 And as diversity is the, I think, pre-eminent issue of the next  
5 decade or two, at least your variety helps to reflect the  
6 variety of the population.

7 But it is an odd tension, and it was disfunctional in  
8 the Honig phase. Without blaming anyone, somehow it went awry,  
9 and we want to avoid that in the future.

10 MR. MALKASIAN: I frankly, you know, people keep  
11 bringing that subject up, and that there's a tension between the  
12 Board and the Superintendent.

13 Maybe I'm oblivious of what's happening around me,  
14 but I haven't experienced any tension at all with Dave Dawson.  
15 In fact, I wrote -- they asked me to write a little blurb on his  
16 retirement thing, and my blurb was: when I first met Dave  
17 Dawson, I thought he was a bureaucratic stuffed shirt that was  
18 walking a straight line and didn't understand the program. And  
19 then I went on, and I said --

20 CHAIRMAN LOCKYER: You were partly right.

21 MR. MALKASIAN: But then I said, after I got to know  
22 him, we became good friends, and I value him as a friend. And  
23 he is a very knowledgeable person.

24 You're right. He is a bureaucratic stuffed shirt.

25 CHAIRMAN LOCKYER: It's obvious you're not.

26 MR. MALKASIAN: Well, my kids at school used to say  
27 about me: what you see is what you get.

28 CHAIRMAN LOCKYER: Other questions?



1           SENATOR AYALA: Yes, I need to ask a couple more  
2 questions.

3           MR. MALKASIAN: Can I answer your other question  
4 first, Senator?

5           SENATOR AYALA: Sure.

6           MR. MALKASIAN: About the elected Superintendent and  
7 the Board.

8           I don't know how you resolve that. And I agree with  
9 Senator Lockyer that, how are you going to elect all these Board  
10 members?

11          SENATOR AYALA: We elect Assembly people and  
12 Senators.

13          MR. MALKASIAN: You can, yes, but you want people  
14 from different areas, and that's what's the beauty of the Board.

15          SENATOR AYALA: The Assembly's from different areas.

16          MR. MALKASIAN: You're right, okay. Go ahead.

17          SENATOR AYALA: You mentioned earlier that you feel  
18 that more local control should take place.

19          As a former school board member, I agree with that.  
20 I think that local members should know what the local people  
21 want. After all, the schools are not owned by anybody except  
22 the people of that community. Neither the teachers, nor the  
23 students, nor the superintendent nor the board. They should be  
24 allowed to do, you know, within the law, what they'll think the  
25 community needs.

26          And if they don't do the right thing, if their  
27 priorities are not in the right place, the next election time,  
28 they'll let them know about it.





1           So, how can we, from the state level, sort of dictate  
2 to local school boards? What's good for Eureka may not be good  
3 enough for San Diego. So, I think we're taking too much away  
4 from local control.

5           The best government is that which is closest to the  
6 people.

7           And I agree that local schools should be given broad  
8 guidelines, of course. They should leave them alone, and let  
9 them set their priorities where they think they belong. And  
10 again, to be redundant, if they don't do it, next election time  
11 the people let them know.

12          MR. MALKASIAN: Well, not too long ago, when you were  
13 all kids, and I'm a little older than you are, it used to be  
14 local control.

15          And in the California system, you had the best. And  
16 as Senator Ayala says, when the board didn't function properly,  
17 they were voted out. And they had control of the budget. They  
18 had control of bond issues, and the whole thing.

19          SENATOR AYALA: That's right.

20          MR. MALKASIAN: I can go back to Sputnik. I was in  
21 the classroom.

22          And, you know, I got into education accidentally. I  
23 was working for Remington Rand Corporation. I met a girl from  
24 Sacramento and came out here, and I had played a little  
25 professional baseball. And the superintendent out here happened  
26 to be a baseball bug. So, my father-in-law introduced me to  
27 him. He said, "Hey, Malkasian, I have a job for you. Why don't  
28 you come out here?"



1 Well, you know, I'm on my way to Venezuela for Texaco  
2 Oil, and that kind of thing. And finally, California looked  
3 pretty good for a guy from the east coast. It happened to be  
4 winter time when I was here, so it looked much, much better.

5 So, I did reconsider and took the job, and that's how  
6 I got into education. And I have never regretted it.

7 CHAIRMAN LOCKYER: What was your position?

8 MR. MALKASIAN: I broke in as an outfielder, center  
9 fielder. And my batting average was such that they thought  
10 maybe I'd be better off as a catcher; I had a chance.

11 Do you want me to go on?

12 There was a funny thing known as the curve ball; the  
13 optical illusion, they called it. I don't know if that's an  
14 optical illusion or not, but somehow, I'm not hitting that  
15 thing.

16 But I did make a few dollars out of baseball, so it  
17 was okay.

18 CHAIRMAN LOCKYER: Is there anyone present who would  
19 wish to comment?

20 Hearing none, I'll ask if the Committee is ready to  
21 move along.

22 Actually, what I'd like to do with the two State  
23 Board appointments, if it's okay with the Committee, is to take  
24 the testimony today and wait a week. Since we're just starting  
25 up the legislative session, I'm a little worried that maybe  
26 there are people in the world that didn't know we were going to  
27 do this today, and that we ought to let them contact us if they  
28 had anything to say.



1 I know you have a short time. It's another ten days,  
2 or something, before the clock runs. So, we'll dispose of the  
3 matter before that.

4 SENATOR LEWIS: Without prejudice.

5 CHAIRMAN LOCKYER: We won't even probably take  
6 further testimony unless someone shows up in the next week who  
7 insists on doing so, in which case we'll let you know. We'll  
8 just have a pro forma vote at the next hearing.

9 SENATOR BEVERLY: We meet when, Monday?

10 CHAIRMAN LOCKYER: Yes, Monday.

11 Thank you, sir.

12 MR. MALKASIAN: Thank you very much.

13 CHAIRMAN LOCKYER: There are a number of witnesses  
14 present, I guess, with respect to Mr. Rude. Let me ask Mr. Rude  
15 to come up.

16 Good afternoon, sir.

17 MR. RUDE: Good afternoon.

18 CHAIRMAN LOCKYER: Did you wish, sir, to begin with  
19 any opening statement at all? You don't have to, but it's up to  
20 you.

21 MR. RUDE: I just want to thank Mr. Chairman and the  
22 Members of the Rules Committee and staff for being here. It's  
23 an honor to be here.

24 The only opening statement is, I've been on the  
25 Industrial Welfare Commission for ten years, last year serving  
26 as its Chair. I've enjoyed my tenure there. I've met a lot of  
27 fine people, both from management and labor side of the aisle,  
28 and look forward to serving an additional term.





1 CHAIRMAN LOCKYER: What I'd like to recommend to  
2 Members of the Committee is that we take testimony, because I  
3 think it may help to focus any discussion. There are issues  
4 mentioned in the packet, and I think you might want to review  
5 those, but it could be redundant if you don't hear the testimony  
6 first.

7 So, if that's agreeable, I'll ask if there are people  
8 present who wish to say something in support of the  
9 confirmation.

10 I think there will be opposition also, and so to the  
11 extent that it's possible to not just sloganize, but to address  
12 whatever the concerns are, that would be constructive.

13 Mr. Washington.

14 MR. WASHINGTON: Good afternoon, Mr. Chairman and  
15 Members.

16 Willie Washington with the California Manufacturers  
17 Association.

18 I'm here in support of Jim Rude, Commissioner on the  
19 Industrial Welfare Commission. I've worked with Jim over the  
20 entire period that he has been one of the Commissioners. We  
21 share some background, in that I come out of the workplace as a  
22 human resources person, so we have that in common as well, and  
23 also for which I'm very grateful because I'm able to talk with  
24 him.

25 I find Jim Rude to have been very knowledgeable,  
26 first of all, and very interested in the subject of the  
27 Industrial Welfare Commission over the years. For me, he's been  
28 very, very approachable, someone that I could talk with and kind



1 of lay out what the manufacturers' positions were relative to  
2 the Industrial Welfare Commission orders.

3 One of the things that we've done in the entire years  
4 that I've been with CMA, and even prior to that when I was with  
5 the -- my previous employer, we have always been seeking some  
6 relief under the wage orders, specifically 189 and 489, the two  
7 that the manufacturers operate under more specifically.

8 I've found Jim and many of the other Commissioners to  
9 be very receptive to hear us out, but I think that just look at  
10 the progress that we've made over this long period of time, and  
11 it kind of tells you where he is. I think he's been very  
12 receptive, and very, very open to our ideas, but I think he's  
13 also been very cautious in the action that he's taken as a  
14 result of that.

15 CHAIRMAN LOCKYER: How many times have you had to  
16 appear on behalf of what you'd call exceptions or exemptions, or  
17 some variation? Is that what they're called?

18 MR. WASHINGTON: Petitions.

19 CHAIRMAN LOCKYER: Petitions for some 12-hour day, or  
20 whatever it might. How many times have you had to participate  
21 in those kind of --

22 MR. WASHINGTON: Formally, Mr. Chairman, only two,  
23 but at the time when there's business that is open, when you can  
24 express your concerns, many.

25 CHAIRMAN LOCKYER: Just general?

26 MR. WASHINGTON: Yes, but in those particular  
27 instances, you're basically down there just kind of getting on  
28 the record.



1 But in terms of formally going through the process,  
2 only two for those specific orders.

3 CHAIRMAN LOCKYER: What was the outcome of those two?

4 MR. WASHINGTON: Way back in '89, 189 the most  
5 recent, there was some movement on that particular order. At  
6 that time we were trying to go to a 12-hour, and be able to work  
7 up to 12 hours in a work day without having to pay overtime  
8 until you reached a 40-hour work week landmark.

9 We got some movement. They did convene a Wage Board.  
10 That Wage Board came back with the recommendation to the  
11 Commission, and at that time they were able to go from an 8-hour  
12 work day under their provisions to a 10-hour work day.

13 The problem with this is that it was weighted down  
14 with a lot of additional rules that were added on to this  
15 particular recommendation.

16 CHAIRMAN LOCKYER: What kind of rules?

17 MR. WASHINGTON: Well, for example, this had to do  
18 with the manufacturing, it was a way that you have to go through  
19 the process of the vote, the filing of the vote requirement, the  
20 fact that they put in there a minimum --

21 CHAIRMAN LOCKYER: The vote of the employees?

22 MR. WASHINGTON: The vote of the employees. And the  
23 fact that you had to register. You had to guarantee a minimum  
24 of 4 hours' work. The fact that there was no flexibility in the  
25 10 hours that you could work.

26 In other words, you vote on schedule, and you were  
27 locked into that thing. Any deviation would cause you to  
28 violate the work schedule, and you would subject yourself to





1 having to take the vote all over again.

2 We've had some -- I'm guessing -- about 500  
3 manufacturers who attempted to use that. And out of those 500,  
4 so far I've only found one. I have not called them all; I don't  
5 want to say that I have. I've only found one who's still  
6 struggling with it. It's really a pain in the rear for them.

7 CHAIRMAN LOCKYER: Who's still doing it?

8 MR. WASHINGTON: Beg your pardon?

9 CHAIRMAN LOCKYER: Who is still doing it?

10 MR. WASHINGTON: There's one down in Orange County  
11 that's still working under it, but it's costing them because in  
12 order for them to continue --

13 CHAIRMAN LOCKYER: Do you recall the name of who's --

14 MR. WASHINGTON: No, but I have it, you know, fairly  
15 handy so that I could get it for you. I just don't have it in  
16 my file with me.

17 But I'm amazed at the number that --

18 CHAIRMAN LOCKYER: Container Corp?

19 MR. WASHINGTON: No, they're not one of those. No,  
20 they are not one.

21 CHAIRMAN LOCKYER: Just teasing. It's not that one,  
22 no. They don't have a union there, so that wouldn't be  
23 relevant.

24 You have the votes of employees, regardless of their  
25 collective bargaining agreements?

26 MR. WASHINGTON: Well, the vote is not required if  
27 you are organized. If you have a collective bargaining unit, a  
28 representative can make that determination and you would work --



1 CHAIRMAN LOCKYER: Otherwise vote.

2 But the others tried it and gave up?

3 MR. WASHINGTON: Right. It was been unworkable, and  
4 it's still -- because there's so many opportunities to foul up,  
5 I mean, the way the rules are written, they're very onerous.  
6 There are so many opportunities for you to foul up.

7 CHAIRMAN LOCKYER: Now, you mentioned having an  
8 employee vote and guaranteeing four hours.

9 MR. WASHINGTON: Yes.

10 CHAIRMAN LOCKYER: Those don't sound particularly  
11 onerous to me.

12 MR. WASHINGTON: Actually it would be, Senator,  
13 because keep in mind that this is an agreed-type item where you  
14 would want to try to have flexibility. You would want to be  
15 able to work up to, and this is part of the problem.

16 CHAIRMAN LOCKYER: Mr. Rude, what's your view about  
17 those two constraints?

18 MR. RUDE: I think there need to be protections when  
19 you open up flexibility in the workplace. When -- the intent  
20 was to get to more of a 40-hour work week, where there could be  
21 flexibility built within that. And there are certain  
22 restrictions that have occurred in doing that.

23 For example, in the health care industry, which  
24 involved the same kind of an issue early on in '89, if an  
25 employee was normally working, say, 20 hours a week, and that  
26 was what they wanted to do, or 24 hours a week, two 12-hour  
27 shifts, and the employee subsequently decided that they wanted  
28 to change schedules with another employee and work an additional



1 half a day or an additional day, that additional day or half-day  
2 would be at overtime to the employer.

3 So again, it added additional restrictions to  
4 flexibility within a 40-hour work week.

5 CHAIRMAN LOCKYER: Were you a member at the time of  
6 the order that Mr. Washington's referred to?

7 MR. RUDE: Correct.

8 CHAIRMAN LOCKYER: So, do you recall concurring in  
9 the employee vote in the four-hour minimum constraints?

10 MR. RUDE: If -- if I'm not mistaken in my  
11 recollection and memory, that went to a Wage Board, and the Wage  
12 Board voted.

13 CHAIRMAN LOCKYER: But didn't you have to affirm it?

14 MR. RUDE: That comes, and that's affirmed by us.  
15 And we really can't count on that unless there are substantial  
16 differences of decision made from when that Wage -- from the  
17 purpose of that Wage Board being convened. So, when the Wage  
18 Board comes back --

19 CHAIRMAN LOCKYER: You give it a general direction?

20 MR. RUDE: Correct.

21 CHAIRMAN LOCKYER: Mr. Washington, you mentioned  
22 you'd been there a second time.

23 MR. WASHINGTON: I was there earlier. In fact, Mr.  
24 Chairman, one of my introductions to California when I first  
25 began to work with the California Manufacturers Association as  
26 an employee with my former employer had to do with the -- the  
27 manufacturers was the one who instigated the first suit.  
28 Whenever the state adopted this and applied it to all the





1 employers in California, the manufacturers was one of the  
2 parties that was a part of that suit.

3 Just keep in mind --

4 CHAIRMAN LOCKYER: Which suit do you mean?

5 MR. WASHINGTON: Well, the IWC initially came about  
6 in the State of California, historically came about, because it  
7 was supposed to be regulating the women and children. And  
8 therefore, as it developed, there was no real interest on the  
9 part of, you know, business and manufacturers, because they  
10 felt, yes, those kind of protections for those particular  
11 entities were --

12 CHAIRMAN LOCKYER: You mean the suit de-genderized  
13 it?

14 MR. WASHINGTON: Yes, in other words -- no, not just  
15 de-genderfied it, because you had children involved here.

16 What it did, in essence, was that it took it from  
17 covering just those two specific entities, women and minors, to  
18 cover the entire employee spectrum. And so, one of the things,  
19 you know, when I first --

20 CHAIRMAN LOCKYER: You were working for --

21 MR. WASHINGTON: Pittsburgh-Des Moines Steel  
22 Corporation.

23 CHAIRMAN LOCKYER: That was a party to that?

24 MR. WASHINGTON: Well, we were part of the  
25 Manufacturers Association, and I was very active.

26 CHAIRMAN LOCKYER: And they wanted it broadened and  
27 opened up.

28 MR. WASHINGTON: No, they did not.



1 CHAIRMAN LOCKYER: All right. This, though,  
2 preceded Mr. Rude.

3 MR. WASHINGTON: Yes, it would have.

4 CHAIRMAN LOCKYER: Did you want to add anything?

5 MR. WASHINGTON: No.

6 I think my point is that we are here frequently  
7 before the Rules Committee on these appointments.

8 Mr. Rude is an employer appointee. I've got to tell  
9 you that in my entire experience down there in terms of the  
10 appointments from labor and from employers, it's been fairly  
11 partisan, and there is not much question about that.

12 We've been almost totally unable to persuade a labor  
13 vote, and I would say that that's probably true in the opposite  
14 direction.

15 I just wanted to add that I've had an opportunity to  
16 talk with Mr. Rude on many, many occasions. And while he's  
17 certainly been responsive to me, and has made me welcome to talk  
18 with him, I can't say that I've come away from there with all of  
19 the things that we would like to have.

20 We're still doing that now, Senator. We're still  
21 trying to get additional relief through the IWC. It has been a  
22 very long haul.

23 So, I think that he's been very fair, and been very  
24 open with the board members, where he stands on the issue. He  
25 articulates it.

26 So, we are strongly supportive of a person like that.

27 CHAIRMAN LOCKYER: I think the question is going to  
28 be, and I have yet to hear enough to reach my own independent



1 conclusion, I think the question will be whether he's been  
2 unduly aggressive as an advocate for the employer community in a  
3 way that is unnecessary.

4 And you could be a conscientious employer perspective  
5 on the board with, perhaps, less vigor or aggressiveness about  
6 the representations that get made.

7 I think that's what I'm hearing from those who have  
8 expressed concerns, but we'll get to that in a moment.

9 MR. WASHINGTON: And I understand, Mr. Chairman. I  
10 would like to say that I wish that I could say that, and I could  
11 show more results to my members that that person had responded  
12 in that way. And I probably not have to be up here in front of  
13 you today.

14 CHAIRMAN LOCKYER: Of course, it might be the public  
15 member who's not helping you enough, not the employer rep.

16 MR. WASHINGTON: You know me, Mr. Chairman. I try  
17 them all.

18 CHAIRMAN LOCKYER: I've noticed. Thanks, Mr.  
19 Washington.

20 MR. WASHINGTON: Thank you, Mr. Chairman and Members.

21 CHAIRMAN LOCKYER: Who's next?

22 MR. ABRAMS: Good afternoon, Mr. Chairman, Members of  
23 the Committee.

24 My name is Jim Abrams. I'm the Executive Vice  
25 President of the California Hotel and Motel Association. I'm  
26 also appearing on behalf of the California Lodging Industry  
27 Association.

28 Our members are, in many cases, very, very small.





1 The Lodging Industry represents approximately 200,000 employees  
2 throughout the State of California.

3 We have for a number of years been very, very  
4 interested in the work of the Industrial Welfare Commission,  
5 particularly because the rules and the regulations in California  
6 are quite often at odds with the rules in other states at the  
7 federal level, all of which has contributed, unfortunately, to  
8 some competitive disadvantages that the hospitality and the  
9 convention industry face here in California. A large component  
10 of how --

11 CHAIRMAN LOCKYER: Which one, minimum wage?

12 MR. ABRAMS: Minimum wage, no, because the minimum  
13 wage in California is, in essence, tied to the --

14 CHAIRMAN LOCKYER: Currently it's the same.

15 MR. ABRAMS: That's right. When it exceeds it, yes.

16 CHAIRMAN LOCKYER: It can't be lower, but it can go  
17 higher.

18 MR. ABRAMS: Yes, and in those cases it is a problem.

19 CHAIRMAN LOCKYER: That's not what you mean by the  
20 burden?

21 MR. ABRAMS: No. The burden's 8-hour day, for  
22 example. Meal and lodging -- excuse me. The tip credit, which  
23 is something -- which is something that really is a problem here  
24 and only in a few other states. So, adding those on top of  
25 other differences between California and other states, it's  
26 created a competitive disadvantage, which is the reason we're  
27 very interested in the Industrial Welfare Commission.

28 Mr. Rude, for the years that he's been there, and



1 I've been working with the Commission all during that time, I've  
2 found him to be an extremely conscientious and a hard working  
3 individual. He worked very hard at understanding all of the  
4 issues and making sure, whether it is an employer point of view  
5 or an employee point of view, that he understands what the  
6 people are saying, the points they are trying to make so that he  
7 can put everything together in the context.

8           Interesting comment you made, Mr. Chairman, that  
9 perhaps some people might be arguing that Mr. Rude is overly  
10 aggressive or strenuous in his position

11           When Mr. Rude has made the hard votes, and those have  
12 typically been, particularly year before last, on the minimum  
13 wage increase, where obviously everything was very partisan, and  
14 the public member had to make the decision, in essence, because  
15 of the vote, Mr. Rude was very careful to articulate why he  
16 voted the way that he did.

17           One might disagree with whether the condition of the  
18 economy in California was in fact as he portrayed it, and in  
19 fact in dire straits, and necessitated his vote, but I don't  
20 know that you can quarrel with somebody for articulating a clear  
21 and consistent position on why he or she is voting in a certain  
22 way. And I really, I guess, wonder if that is unduly -- being  
23 unduly aggressive in how one perceives Mr. Rude.

24           CHAIRMAN LOCKYER: I think minimum wage is a fair  
25 dispute on all sides and wouldn't regard that solely as  
26 sufficient.

27           MR. ABRAMS: I understand.

28           Interestingly, also, Mr. Washington mentioned the



1 12-hour day, the flexible work schedule, which has been a big  
2 issue for us.

3 We did, along with the Restaurant Association, file a  
4 petition a number of years ago, asking for flexibility to have  
5 up to 12 hours within the 40-hour work week.

6 With all due respect to Mr. Rude, we were not pleased  
7 with some of the restrictions that he voted for in implementing  
8 that, in favor of employees.

9 CHAIRMAN LOCKYER: Which ones; do you recall?

10 MR. ABRAMS: In particular, in the restaurant  
11 industry, we have a lot of part-time employees. And what they  
12 like to do, particularly students, is trade-off schedules. "You  
13 have finals next week. I'd love to work 36 hours next week.  
14 I'll take your schedule."

15 One of the conditions that was voted upon and put  
16 into the regulation was that it has to be a vote of two-thirds  
17 of the employees as it affects their regular work schedules.  
18 So, for example, if my regular work schedule is to work one to  
19 four, I can't, on a week by week basis, or month by month basis,  
20 change that. If I, as an employer, want to have a flexible work  
21 schedule, it's got to be for what that employee normally would  
22 work for the course of six months or a year, whatever his or her  
23 regular schedule is. That's very, very onerous for the  
24 hospitality industry, where employees like to change schedules  
25 frequently.

26 You have a vote, and the employees vote that for the  
27 next year, or whatever period of time is covered by the  
28 agreement, I will work three 12-hour shifts, or two 9s, or





1 whatever it is going to be. And we find it very onerous, too,  
2 as employers, to allow people to change shifts.

3 Mr. Rude does not always agree --

4 CHAIRMAN LOCKYER: This bad guy did that to you?

5 MR. ABRAMS: Absolutely.

6 Having said that, and I don't mean to be facetious at  
7 all, Mr. Chairman, that Mr. Rude listens to the issues. And  
8 while he certainly represents the point of view which he was  
9 picked to represent, and which the statute requires that he  
10 represent --

11 CHAIRMAN LOCKYER: I understand that.

12 MR. ABRAMS: -- that is what he is there for. And  
13 he's done an admirable job, as far as we are concerned, over the  
14 years that he's been there in being conscientious. He is at the  
15 meetings; he's hard working; he's diligent. He pays attention,  
16 and I, quite frankly, wish that all of the Commissioners over  
17 the years had done the same.

18 So, we very heartily support his reconfirmation to  
19 the Commission.

20 Thank you, sir.

21 CHAIRMAN LOCKYER: Thank you.

22 Next.

23 MR. LUEVANO: Good afternoon, Mr. Chairman, Members  
24 of the Committee.

25 My name is Tom Luevano. I represent the California  
26 Association of Hospitals and Health Systems, and also here today  
27 on behalf of the Health Care Human Resource Management  
28 Association of California, of which there are about 450 members.



1 I'm here to show our support for Commissioner Rude's  
2 confirmation to the IWC. I've had the pleasure of knowing  
3 Commissioner Rude professionally as a human resource executive  
4 for well over twelve years, and as a Commissioner for well over  
5 nine.

6 We have found Commissioner Rude's open-mindedness and  
7 his responsiveness to issues quite refreshing. He is  
8 sympathetic and compassionate to the issues of both employees  
9 and employers whenever they testify. And his integrity, ethics,  
10 and his leadership have been well received by the regulatory  
11 staff and business community, and most recently by the  
12 Commissioners themselves by electing him as Chair of that  
13 Commission.

14 Commissioner Rude provides the only continuity left  
15 on that Commission, since he is a nine-plus year member of the  
16 Commission. The rest of the Commissioners, I think Robert Hanna  
17 was appointed in 1991, so we don't really have anybody with a  
18 long-standing level of continuity that we need there.

19 We therefore ask this body to consider reappointing  
20 Commissioner Rude to this position as an IWC Commissioner.

21 SENATOR BEVERLY: Thank you.

22 Any questions of the witness?

23 Anybody else speaking in favor of the nomination?

24 MS. BROYLES: Good afternoon, Mr. Chairman, Members.

25 I'm Julie Broyles with the California Chamber of  
26 Commerce, and I'm here today to speak in support of Mr. Rude and  
27 his reappointment to the Industrial Welfare Commission.

28 Due to the lateness of the hour, I won't go in and



1 say yet again what a diligent, hard working, and conscientious  
2 member of the board he has been, but we truly have found him to  
3 be so and would hope that you would seriously consider his  
4 reappointment to the Commission.

5 Thank you.

6 SENATOR BEVERLY: Thank you.

7 Any questions?

8 Next witness.

9 MR. GABRIEL: Mr. Chair and Members of the Committee,  
10 my name is Roy Gabriel, representing the California Farm Bureau  
11 Federation. I'm here to support the reappointment of Mr. Rude  
12 as the management member of the Industrial Welfare Commission  
13 for the reasons that are previously stated.

14 Thank you.

15 SENATOR BEVERLY: Any questions of Mr. Gabriel?

16 Any further witnesses?

17 MR. MAHAN: Mr. Chairman, Members of the Committee,  
18 my name is Paul Mahan. I represent the California Trucking  
19 Association.

20 I don't know that I could add anything that hasn't  
21 already been said about the attributes of Mr. Rude, but we are  
22 here to support his reappointment to the Industrial Welfare  
23 Commission as the management representative.

24 SENATOR BEVERLY: Thank you.

25 Committee have any questions?

26 Does that conclude the support?

27 There is opposition present, I assume. If you'd come  
28 forward.





1 MS. BOUCHER: Good afternoon, Chairman and Members.

2 My name's Debby Boucher. I'm a registered nurse, and  
3 I'm here representing the California Nurses Association.

4 We're opposed to the confirmation of Mr. Rude,  
5 basically because of his positions and votes on the 12-hour  
6 shift, which has been devastating to nurses.

7 In the past, the 8-hour shift has been the standard  
8 in the hospital industry. Nurses have been compensated for any  
9 work over 8 hours.

10 The recent ruling that allowed hospitals to offer  
11 12-hour shifts at straight pay to nurses has caused two things.  
12 First off, nurses will make 15-20 percent less with  
13 uncompensated 12-hour shifts. And also, the error rate, the  
14 patient injury rate, and the employee injury rate during the  
15 last four hours of the 12-hour shift -- in other words, the four  
16 hours that we would like to be compensated extra -- is  
17 problematic in hospitals.

18 As hospitals restructure, there are fewer nurses for  
19 more patients, for sicker patients, and there are more injuries  
20 because of that.

21 What we're also finding in the industry is that while  
22 some nurses do prefer the 12-hour shifts, most of those nurses  
23 are younger nurses. As the nursing population ages, and the  
24 average age of a registered nurse in California is 43, it  
25 becomes more and more difficult to work a 12-hour shift. As a  
26 registered nurse, I can tell you, at the end of 12 hours, you  
27 are mentally exhausted and physically exhausted. It's very hard  
28 work.



1           The demand on, for example, a 50-year-old woman to  
2 stand, walk, lift, and think accurately for 12 hours, and to do  
3 all that for 20 percent less pay, devalues the role of the  
4 nurse.

5           I thank you for your time.

6           CHAIRMAN LOCKYER: Thank you very much.

7           Question, Senator Lewis.

8           SENATOR LEWIS: I'm just curious. The first I was  
9 aware of the opposition of the Nurses Association was today.

10          When did you formulate your position?

11          MS. BOUCHER: I believe, and as you know, I'm new as  
12 a lobbyist, but I believe that this has been our position since  
13 the last hearing, which I believe was four years ago.

14          SENATOR LEWIS: Did you communicate to Mr. Rude your  
15 opposition?

16          MS. BOUCHER: I believe that we did, but I can't say  
17 for sure. The opposition today?

18          SENATOR LEWIS: Yes.

19          MS. BOUCHER: I don't believe that we did. In the  
20 past I believe that we have.

21          CHAIRMAN LOCKYER: Unlike a bill, where somebody  
22 might be surprised, when we do confirmations there aren't any  
23 great surprises about who pops up on both sides of the issues.

24          It's a nice courtesy, but I don't know that it --

25          SENATOR LEWIS: I guess that was the question. As a  
26 relatively new Member of the Rules Committee, I was kind of  
27 curious about the decorum.

28          CHAIRMAN LOCKYER: I'm new, too. All I can tell you



1 is, I've been hearing about this for four years.

2 SENATOR LEWIS: I've served on policy committees with  
3 chairmen that wouldn't allow opposition witnesses to testify --

4 CHAIRMAN LOCKYER: Not me.

5 Mr. Henning, Ambassador Henning.

6 MR. HENNING: Mr. Chairman and Members of the  
7 Committee, the California Labor Federation is opposed to the  
8 reappointment of Mr. Rude.

9 We regard as outrageous the 12-hour day structure  
10 established by this Commission in recent years, and in every  
11 case save one, he voted for that. That means 12 hours of work,  
12 no overtime after eight.

13 Now, one of the employer representatives here  
14 indicated that, after all, the workers had to vote for it.

15 I don't know if any of you are aware of how that vote  
16 is conducted. The employer conducts the election. No neutral  
17 source, no governmental source. The Commission doesn't conduct  
18 the election through its agencies. It's conducted by the  
19 employer. He keeps the ballots. He counts the ballots.  
20 There's no means of appeal. So, it's a violation of every  
21 concept of labor-management adjudication or reconciliation of  
22 views. It's just a thing imposed by the employer.

23 And Mr. Rude is part of the group that favors that  
24 and has put it into place.

25 Some of the representatives of industry who spoke  
26 here, understandably, were pleased by it. The hospital  
27 industry, of which he is an employer, certainly entitled to  
28 representation of his employer's interests, the hotel and





1 restaurant industry, the amusement industry, recreation  
2 industry, all of them have imposed the 12-hour day through these  
3 fraud elections that could never be considered for one moment in  
4 the federal sphere, in the representation, election, or  
5 determination of the worker positions.

6 He voted with the other members to have a subminimum  
7 wage for tipped employees. Outlawed by the State Supreme Court,  
8 which is hardly a radical, leftist organization. As I remember,  
9 the vote on the Supreme Court was unanimous against this body.  
10 This indicates --

11 CHAIRMAN LOCKYER: What was the issue before them?

12 MR. HENNING: The subminimum wage.

13 CHAIRMAN LOCKYER: Oh, yes.

14 MR. HENNING: That if you're going to get tips, you  
15 should have something less than a minimum wage required for  
16 economic survival, ruled out by the State Supreme Court;  
17 although, adopted by this Commission, voted for by Mr. Rude.

18 There is a provision in the law which, incidentally,  
19 was established -- the whole concept was established by Hiram  
20 Johnson in the years before the First World War, when reformist  
21 legislation was moving in Washington and several states. And it  
22 is mandatory that this body review the situation every two years  
23 as to the adequacy of the minimum wage.

24 We've asked for reviews time and again, and been  
25 defied and ignored. So, it has not met its statutory  
26 obligations.

27 Obviously, we are strongly opposed.

28 In the concept of Hiram Johnson, this structure was



1 established to protect those who have so little, basically.  
2 Restaurant workers scrape by for economic survival. So it is  
3 with many of the others who are governed by the minimum wage.

4 Minimum wage is existence wage. That's all it is.  
5 And it's being denied its fullness by Mr. Rude and those who  
6 believe as he does.

7 Now, it's said: but he's entitled to represent the  
8 employer view. They're not all that way. We deal with  
9 employers who would never, under any condition, impose a 12-hour  
10 day on a worker and say, "You work 12-hour day without  
11 overtime." It'd be insulting. So, he isn't representative of  
12 all employers, not at all.

13 He's representative of a single group of employers  
14 who believe that's the way workers should be treated.

15 We are in opposition.

16 CHAIRMAN LOCKYER: Thank you.

17 MR. DAVENPORT: Mr. Chairman, I'm Allen Davenport. I  
18 represent the Service Employees International Union. I'm here  
19 today to speak on behalf of our janitors and home care workers  
20 who are minimum wage workers in hotels, amusements, hospitals,  
21 office buildings throughout California.

22 Also on behalf of the nurses, I think the 12-hour day  
23 argument has been made, so I'm going to focus on a couple of  
24 other things here.

25 I had the opportunity, while the employers were  
26 testifying here about seeking relief from the IWC for  
27 competitive disadvantages to industries and appealing on  
28 conditions of the economy, to review the Code. And when I



1 looked in the Code, I saw that the responsibility of the  
2 Industrial Welfare Commission is not in those areas.

3 It's in the areas of determining if wages are  
4 inadequate to supply the cost of proper living, if the hours or  
5 conditions of work are prejudicial to the health, morals, or  
6 welfare of employees. That's the duty of the Industrial Welfare  
7 Commission.

8 Industrial Welfare Commission has apparently found  
9 that wages of \$170 a week, which amounts to around \$150  
10 take-home pay, \$600 a month, they find, are adequate to supply  
11 the cost of proper living.

12 I challenge any of you to live on \$600 a month for a  
13 month. All right? You look at the cost of apartments in the  
14 want ads. You look at the cost of a bag of groceries.

15 This Industrial Welfare Commission has simply ignored  
16 its responsibilities and failed to do its duty under the law,  
17 and Mr. Rude has been a leader in that effort. You rejected  
18 Lynne Pollack for similar reasons. I urge you to reject Mr.  
19 Rude.

20 CHAIRMAN LOCKYER: Are there others that wish to  
21 comment?

22 Now it's Committee Member time.

23 SENATOR AYALA: I have questions for Mr. Rude.

24 Mr. Rude, state law clearly requires that you review  
25 the minimum wage every two years. It's my understanding that  
26 you resisted that as a member of that Commission. Is that true?

27 MR. RUDE: No, it isn't, Senator.

28 We have an open review on the minimum wage. It's





1 calendared almost every meeting for minimum wage review.

2 SENATOR AYALA: Then it's a matter of record that  
3 these folks who have stated that you don't get involved in that  
4 type of activity, even though the law requires you to do it?

5 MR. RUDE: It's a matter of public record on the  
6 agenda that we seek testimony, we receive information  
7 periodically, both from labor organizations, employer  
8 organizations, academic institutions regarding the state of the  
9 economy and the impact of the minimum wage. Those are sent to  
10 us routinely.

11 SENATOR AYALA: And the IWC does, indeed, set the  
12 minimum wage?

13 MR. RUDE: Correct. The minimum can be increased, I  
14 guess, in three ways in the State of California. One is through  
15 legislative action; one is through the Industrial Welfare  
16 Commission action; and third automatically is --

17 SENATOR AYALA: But your Commission could do it?

18 MR. RUDE: Correct.

19 SENATOR AYALA: Well, they haven't had a raise since  
20 1988, I'm told.

21 MR. RUDE: Correct.

22 SENATOR AYALA: Do you think that's fair?

23 MR. RUDE: In reviewing that, the economy in  
24 California has been in a recession, and I can't count the number  
25 of months now, but I know it's 40 months plus, going on 44  
26 months, 45 months.

27 In looking at the context of -- for increasing the  
28 minimum wage, is the minimum wage enough? Probably not. Does



1 it impact, though, the health and welfare of all employees?

2 Yes, it does. And by increasing the minimum wage, that also has  
3 an impact. It has an impact of unemployment or disemployment as  
4 well.

5 And as a Commissioner, I've got to look, as well as  
6 the other Commissioners, we look at that total economic context,  
7 not just is the dollar amount enough, because I think most of us  
8 are probably agreed, it probably isn't.

9 SENATOR AYALA: The Assembly Speaker's Economic  
10 Summit in 1993, in Southern California, a number of prominent  
11 Californians, including Pete Ueberroth, called for an increase  
12 in the minimum wage.

13 What connection do you see between the economic  
14 development in California and the minimum wage?

15 MR. RUDE: We've received a variety of different  
16 studies on that. One study indicated that, on one hand,  
17 increasing the minimum wage doesn't really have a negative  
18 economic increase. On the other hand, a variety of studies  
19 indicate that it does; it exacerbates unemployment and  
20 disemployment.

21 So, I think it does impact. It does impact the  
22 economy of the State of California.

23 Similarly, as we -- we're talking in the press, and  
24 everywhere else, about global economies with GATT, and so on and  
25 so forth, in the United States itself, in states themselves, we  
26 are one of the eleven industrial states of the nation, and our  
27 minimum wage is consistent with what the federal government  
28 offers as a minimum wage for the other states, industrialized



1 states, in the nation as well.

2 CHAIRMAN LOCKYER: I'm sorry. Are you saying that  
3 they're at the same level? There aren't states higher than us?

4 MR. RUDE: There are some states that are higher.  
5 What I'm referring to, sir, is the industrialized  
6 states.

7 CHAIRMAN LOCKYER: That they're the same?

8 MR. RUDE: Pretty much the same.

9 CHAIRMAN LOCKYER: Who's higher?

10 MR. RUDE: Alaska, Hawaii, I think Nevada is. I  
11 don't have them all on the tip of my fingers.

12 CHAIRMAN LOCKYER: That nasty competitor Nevada,  
13 taking all of our jobs, higher minimum wage.

14 SENATOR AYALA: The minimum wage is 4.25?

15 MR. RUDE: Correct.

16 SENATOR AYALA: It was set six years ago?

17 MR. RUDE: I believe so, yes.

18 SENATOR AYALA: Don't you think inflation is eating  
19 some of that 4.25? That we're talking about less buying power?  
20 These folks are not entitled to that adjustment?

21 MR. RUDE: Inflation clearly has eaten into the  
22 purchasing power of the dollar.

23 SENATOR AYALA: Well, of course. If inflation is up,  
24 your buying power is less, so it's much less than 4.25 six years  
25 later.

26 MR. RUDE: Correct.

27 SENATOR AYALA: Don't you believe that they should  
28 get some kind of a review and adjustment then?





1 MR. RUDE: We do review.

2 SENATOR AYALA: The adjustment as well. You can  
3 review all you want, but adjustments that go along with the  
4 need.

5 MR. RUDE: Senator, when we look at the minimum wage,  
6 and we review the minimum wage, we also look at the impact of  
7 increasing the minimum wage on people receiving the minimum wage  
8 or working poor.

9 For example, we had a hearing with farmworkers. And  
10 one of the individuals testifying in that hearing indicated that  
11 the last time the minimum wage increase went up, her total  
12 income went down because part of her earnings was -- which she  
13 earned in salary -- part of her earnings was involved with AFDC  
14 payments. And when the minimum wage went up, her AFDC payments  
15 went down, and the net loss was greater than her gain because of  
16 the increase in the minimum wage.

17 SENATOR AYALA: I'm not an economist, but you have a  
18 hard time convincing me that when you increase the minimum wage,  
19 they're going to lose money.

20 CHAIRMAN LOCKYER: Well, the AFDC payment went down  
21 in that circumstance; did it not?

22 MR. RUDE: Correct.

23 CHAIRMAN LOCKYER: So it saved the taxpayers some  
24 money.

25 MR. RUDE: It was the relationship -- it may have  
26 saved the taxpayers money, but for that individual, it probably  
27 wasn't a beneficial --

28 SENATOR AYALA: Did income tax and all these other



1 taxes go up for them? What is the rationale there?

2 CHAIRMAN LOCKYER: It's really federal law and  
3 regulation on earned income.

4 It's now been changed last year by the Congress, and  
5 so I don't know whether that would be as true today as it was  
6 when you last heard the testimony. I guess, if it was based on  
7 what happened, it's what happened prior to 1988, so probably the  
8 law has changed three or four times, I would guess, since then,  
9 but most significantly last year on earned income credits.

10 Pardon me, Senator Ayala.

11 SENATOR AYALA: Do you believe that the minimum wage  
12 as currently set is an appropriate level at this point?

13 MR. RUDE: It's a competitive level of pay for  
14 minimum wage with the other states.

15 CHAIRMAN LOCKYER: Should that be the principle  
16 consideration, do you think? How do you go about weighing?

17 And I understand the balancing you need to do. And  
18 you've been forthright in saying it's probably inadequate in  
19 terms of just adequate support for a human being or a family.

20 Could you try to quantify the various considerations  
21 that would go into tilting the balance one way or the other?

22 I'm trying especially to understand, if the  
23 California economy is as robust as some think it might shortly  
24 be, does that change the equation, or are there still other  
25 considerations, international economics, other state  
26 competition, or whatever, that are still sufficiently compelling  
27 to make it unlikely?

28 MR. RUDE: I think that looking at the state economy



1 is an important variable. When the minimum wage was increased  
2 last, the economy was strong.

3 I voted for an increase in the minimum wage that  
4 wasn't as high as it ultimately got to, but I saw the need to  
5 increase it at that time.

6 CHAIRMAN LOCKYER: What was that one?

7 MR. RUDE: That was -- it was at 3.35, and I think it  
8 was 3.75.

9 CHAIRMAN LOCKYER: So this was back in '88?

10 MR. RUDE: Correct.

11 I would look at the composition of the minimum wage  
12 wage earner as well. Data we've received over the years  
13 indicates that many of the minimum wage wage earners are youth  
14 who are living at home. They are not the individuals who are  
15 supporting a family on minimum wage.

16 CHAIRMAN LOCKYER: What proportion do you think that  
17 is?

18 MR. RUDE: I'm going to to have to swag it, but I  
19 don't want to --

20 CHAIRMAN LOCKYER: Even if it were --

21 MR. RUDE: It is predominant. I'm going to say  
22 around 55 percent or so.

23 CHAIRMAN LOCKYER: Are youth living at home, that  
24 kind of circumstance?

25 MR. RUDE: Primarily, correct.

26 CHAIRMAN LOCKYER: What industries do you think are  
27 most dependent or rely the most on minimum wage work forces?

28 MR. RUDE: I'd say primarily restaurants, and hotel





1 and lodging establishments. Some agricultural; agricultural,  
2 depending upon the kind of agricultural work that's being done,  
3 but primarily I'd say in service.

4 CHAIRMAN LOCKYER: Would you disagree that all three  
5 of those sectors are not industries that move out of the state?  
6 They are not mobile. The land is here. Maybe somebody could  
7 take something out of production, but the land's here; they  
8 aren't moving. The restaurant and lodging industry is here.  
9 The service industries are here, so at least relative to other  
10 business organizations, these are among the least mobile, where  
11 the other state competition is the least relevant, or less  
12 relevant than it is to, maybe, a manufacturing site, or  
13 something.

14 MR. RUDE: I would say that that's probably true with  
15 hotels and lodging establishments and restaurants.

16 The testimony we have received as to whether  
17 restaurants move in is an issue, whether or not they want to  
18 come --

19 CHAIRMAN LOCKYER: Well, they go in and out of  
20 business a lot --

21 MR. RUDE: Correct.

22 CHAIRMAN LOCKYER: -- but that's different than  
23 moving to another --

24 MR. RUDE: Many of the restaurants that testified in  
25 our public hearings are fairly small; mom-and-pop, if you want  
26 to use that term, establishments, with very thin margins. Their  
27 cost of doing business has increased significantly over the last  
28 ten to fifteen years: insurance costs --



1 CHAIRMAN LOCKYER: I think those things are true; I  
2 agree.

3 MR. RUDE: Part of that mixture comes into play.

4 CHAIRMAN LOCKYER: Is there much minimum wage in the  
5 health area?

6 MR. RUDE: Very little, except probably in the home  
7 health area, personal assistance, in that area. The bulk of  
8 health care --

9 CHAIRMAN LOCKYER: Not in the hospital setting?

10 MR. RUDE: Not in acute care hospitals, no.

11 In agriculture, as I recall testimony there,  
12 obviously, land's not moving back and forth, or at least we're  
13 not going to annex Nevada or whatever, but it is the cost of  
14 goods sold, and of the cost of growing, and shipping, and  
15 supplying. Those factors play into it as well, and again, other  
16 costs of doing business.

17 CHAIRMAN LOCKYER: If you had to speculate, and  
18 that's all I can urge, first with respect to the process of  
19 conducting a full review every two years, it sounded to me a  
20 little like it wasn't much of a full review, or isn't.

21 Now, I'm not there, and I don't see it, and so  
22 perhaps I just misunderstand how seriously you take each comment  
23 that's made at a meeting.

24 I would think conducting a full review would  
25 necessitate fact finding and voting on conclusions.

26 MR. RUDE: Correct.

27 CHAIRMAN LOCKYER: Do you actually go to a vote every  
28 so often, including no more than every two years, or what?



1 MR. RUDE: At the end of the last vote, and I don't  
2 have the date, we go to a full vote.

3 CHAIRMAN LOCKYER: The '88 vote? That's the last  
4 increase. There were hearings subsequent to '88.

5 MR. RUDE: We had a discussion, and I'm blanking out  
6 on you and I apologize for that, but I can give you a chronology  
7 of it in writing later if you would like.

8 CHAIRMAN LOCKYER: If you want. Just as you can  
9 recall.

10 MR. RUDE: There was a full vote, and maybe someone  
11 from the audience can --

12 CHAIRMAN LOCKYER: And it was voted down?

13 MR. RUDE: Correct, not to go to a full hearing at  
14 that time.

15 CHAIRMAN LOCKYER: Oh, not to go to the full hearing,  
16 so not actually a vote on someone saying, "I move we raise it to  
17 \$5 -- "

18 MR. RUDE: Correct.

19 CHAIRMAN LOCKYER: -- and people voted yes and no;  
20 that didn't occur?

21 MR. RUDE: Correct. We haven't had a full  
22 Commission, either, which I think is an important issue.

23 CHAIRMAN LOCKYER: Who are you missing?

24 MR. RUDE: Well, it depends what year you're looking  
25 at, but --

26 CHAIRMAN LOCKYER: Aren't you full now, though?

27 MR. RUDE: Not that I'm aware of. Our last meeting  
28 in November, we had four Commissioners.





1 CHAIRMAN LOCKYER: Which slot --

2 MR. RUDE: It's the public.

3 CHAIRMAN LOCKYER: The public one?

4 MR. RUDE: Correct.

5 CHAIRMAN LOCKYER: I guess that's a way not to get  
6 anything done.

7 I'm sorry. Other Members pop in any time that you  
8 might wish to.

9 MR. RUDE: Can I respond --

10 CHAIRMAN LOCKYER: It was Ms. Vuksich?

11 MR. RUDE: Correct.

12 CHAIRMAN LOCKYER: She's no longer there?

13 MR. RUDE: No, she's not.

14 CHAIRMAN LOCKYER: Were you going to add something?

15 MR. RUDE: Yes, sir.

16 I wanted to respond to the 12-hour arrangement, if I  
17 could, and a little bit of more personal history.

18 I've worked in the human resources field for, I  
19 guess, it's going on 20 years now, and one of the interests I  
20 had in the Industrial Welfare Commission years ago was when  
21 nurses came to me and said, "Gee whiz, we would like to be able  
22 to work more flexible staffing arrangements, but we can't  
23 because the employer doesn't want to pay overtime for those."

24 And being young and naive, I thought, well, why  
25 wouldn't someone be able to have an agreement with their  
26 employer that would kind of add some flexibility in determining  
27 when they could work more flexible staffing. And studying the  
28 law a little bit, and kind of getting into it, realizing they



1       couldn't because the law is the law.

2               And one of my interests in getting on the Industrial  
3       Welfare Commission was to take a look at where employers and  
4       employees could work together to bring about mutually beneficial  
5       arrangements that could occur.

6               A lot of that is in the backdrop. There's been a  
7       fairly significant change in the work force demographics over  
8       the last 15-20 years. There are more women of child-bearing age  
9       in the workplace, and in health care, that's always been the  
10      case. There are longer commute issues that people have to  
11      respond to as urban sprawl has taken its place, and I think we  
12      all experience that. There are commuter obligations now to  
13      reduce commute time, and you know, things that impact people's  
14      commute schedules, and so on and so forth.

15              People are wanting to work, in some cases, with  
16      certain restrictions and certain protections, more hours in the  
17      day and less days a week. And what we tried to do is provide  
18      those protections.

19              To argue that we've imposed the 12-hour shift on the  
20      work force, I haven't found the evidence of that, because  
21      periodically I ask the Division of Labor Standards and  
22      Enforcement, which is the enforcement wing of the policies that  
23      we put forward, and say: Please let me know if these things are  
24      creating problems, or if there's a preponderance of problems  
25      occurring. And there aren't any.

26              CHAIRMAN LOCKYER: How many businesses have a 12-hour  
27      shift? Can you quantify that? Do you keep that kind of  
28      statistic?



1 MR. RUDE: No, I couldn't tell you. They are both,  
2 though, I know as factually, are both in nonunion and union  
3 environments. The California Nursing Association itself has  
4 contracts that allow for these kind of arrangements.

5 CHAIRMAN LOCKYER: We heard in the manufacturing  
6 sector, probably very few. Does that seem correct to you?

7 MR. RUDE: I would think so, because over the last  
8 four years, we've had companies, employees, come forward from  
9 manufacturing companies saying, "We would like greater  
10 flexibility, but we're not going to do it because it's too  
11 onerous."

12 CHAIRMAN LOCKYER: How about in health?

13 MR. RUDE: In the health field --

14 CHAIRMAN LOCKYER: How wide spread?

15 MR. RUDE: It's very -- I couldn't quote you a  
16 percentage, and if I had to swag it, I'd say maybe 20 percent of  
17 the organizations --

18 CHAIRMAN LOCKYER: I've learned something from  
19 intelligent guesses, which is more than I know.

20 How about Sutter?

21 MR. RUDE: I don't know whether they exist there,  
22 either. Those are usually done individually by units based on  
23 staff requests.

24 CHAIRMAN LOCKYER: Do you think there are some there,  
25 12-hour shifts?

26 MR. RUDE: Yes, I'm sure there are.

27 CHAIRMAN LOCKYER: I wanted to ask you earlier, and I  
28 guess I lost my thought, to speculate a bit on the next full





1 review of the minimum wage issue.

2 I happen to be one of those that think Clinton made a  
3 mistake in not making the minimum wage increase a national  
4 issue, a high priority, rather than some other choices he made  
5 about issues. That's irrelevant, I guess, sorry.

6 But when the next full review occurs, how is the  
7 teeter-totter doing for you in terms of the various  
8 considerations that you have to run through?

9 And I'm not in any way suggesting that your  
10 confirmation is in any way conditioned or dependent on any  
11 answers you give about future acts. I want to be very clear  
12 about that.

13 I'm just trying to understand your philosophy and  
14 approach. Was it a close call the last time you looked at it,  
15 or not? Are there changes that tilt it differently?

16 Just to the extent that you can comment on that.

17 MR. RUDE: Sure, I'd be happy to.

18 I think the last time we looked at it, for some of  
19 the reasons you discussed about maybe Clinton making a mistake  
20 not doing it, we had health care coming in, a major cross for  
21 the employer in the context of increasing the minimum wage, that  
22 makes sense. And reading Robert Reich and some of the other  
23 comments on that, that was part of the reason why they didn't  
24 want to move forward as well.

25 I think as we move into a more robust economy in  
26 California, I think that as we start looking at the further  
27 erosion of the impact of the minimum wage in the context of the  
28 overall economy and the overall impact on labor costs in the



1 state, I would seriously look at it again.

2 CHAIRMAN LOCKYER: Other Members, any questions?

3 Yes, Mr. Rankin, did you wish to add something.

4 MR. RANKIN: Tom Rankin, California Labor Federation.

5 I wish to clarify a couple of points, if I could.

6 The full review is spelled out in the statute, and it  
7 involves three public hearings, setting up a Wage Board, and  
8 three further public hearings.

9 There have been two conducted in the last seven  
10 years.

11 CHAIRMAN LOCKYER: Two of those?

12 MR. RANKIN: Yes, those of those. The last was  
13 concluded in August of 1993, when a 25 cent increase in the  
14 minimum wage was proposed, and Mr. Rude voted against a meager  
15 25 cent increase in August of '93.

16 Since that time, he has consistently refused, even  
17 though we have appeared at almost every --

18 CHAIRMAN LOCKYER: Did you say '93, Mr. Rankin? So  
19 that was when that whole process had been conducted.

20 MR. RANKIN: That was started -- that process that  
21 ended in August of '93, was started, that full review, in  
22 December of 1991.

23 CHAIRMAN LOCKYER: This is probably in the public  
24 record, but one of your supporters had mentioned as a witness  
25 that they thought you had been very forthright in stating  
26 reasons on the record for your opposition.

27 From your recollection, can you restate those?

28 MR. RUDE: At that time, I believe our unemployment



1 rate was 10 percent-plus in the State of California. We were  
2 not doing well, and the trend line did not look good for the  
3 economy of this state.

4 I'm assuming that that was part of that, in addition  
5 to looking at some potential costs associated with the  
6 imposition of the health reform package.

7 MR. RANKIN: The main point is, though, that ever  
8 since that time, Mr. Rude had consistently refused to open that  
9 process, even though that process takes from 18 months to two  
10 years before you get to the end of it.

11 CHAIRMAN LOCKYER: Have there been petitions to do  
12 that?

13 MR. RANKIN: We have appeared at almost every IWC  
14 meeting, asking him.

15 CHAIRMAN LOCKYER: How many has that been?

16 MR. RANKIN: Since August of '93, do you mean?

17 CHAIRMAN LOCKYER: How often do they meet?

18 MR. RANKIN: Once a month, except they haven't had a  
19 quorum for a few months.

20 CHAIRMAN LOCKYER: We have this absent member or  
21 vacancy.

22 Have they voted to not --

23 MR. RANKIN: They have -- there have been motions at  
24 almost every meeting where we appeared to increase -- to open  
25 the review, and Mr. Rude has consistently voted against them  
26 without comment, without comment. And the problem is --

27 CHAIRMAN LOCKYER: How does Mr. Novey vote on those?

28 MR. RANKIN: He votes for opening review.





1           The problem is, the purpose of that two-year review  
2 was to allow for incremental increases with inflation. When the  
3 Industrial Welfare Commission waits for seven, eight, nine  
4 years, they never can catch up with inflation. They didn't  
5 catch up with it in 1988. To catch up with it now, they'd have  
6 to catch up with what they did in 1988, which represented a  
7 great decrease in the value of the minimum wage.

8           If you look at it back in the '60s, it used to take a  
9 person above the poverty level by a considerable amount. It  
10 doesn't do that any more.

11           CHAIRMAN LOCKYER: Thank you, Mr. Rankin.

12           Is there anyone else that would wish to comment? Are  
13 there Members who want to ask further questions?

14           My recommendation to the Committee, I think your year  
15 is running here pretty soon as well. Perhaps Nancy would remind  
16 me of the date.

17           MR. RUDE: I believe it's the 15th.

18           CHAIRMAN LOCKYER: It's that we thank everyone for  
19 their testimony, and schedule it on next Monday for a final  
20 vote, one way or the other.

21           Thank you very much, sir.

22           MR. RUDE: Thank you very much.

23           CHAIRMAN LOCKYER: Our final one that requires some  
24 public testimony now is Ms. Thomas.

25           Gerti, if you'd join us up here. Thank you for your  
26 patience in --

27           MS. THOMAS: Being on the State Board, you get  
28 conditioned to it.



1 CHAIRMAN LOCKYER: I know what you mean.

2 If you wanted to begin with any opening, I'll ask  
3 Senator Beverly to conduct it for a moment.

4 SENATOR BEVERLY: Would you like to make a statement  
5 why you think you should be retained

6 MS. THOMAS: Yes, Senator.

7 Mr. Chairman, Members of the Committee, my name is  
8 Gerti Thomas. I am presently a member of the State Board of  
9 Education, and I'm here seeking reconfirmation for my  
10 reappointment.

11 I'm a product of the educational system of the State  
12 of Louisiana and the State of Alabama. My basic education was  
13 in Louisiana, and my first degree was in Alabama at Tuskegee  
14 University, and my graduate work was done at Golden Gate  
15 University.

16 I am a product of what they call vocational  
17 education. My first degree is in home economics, specializing  
18 in dietetics. I am a registered dietitian and also I have a  
19 degree in administration.

20 I enjoy being on the State Board. I consider the  
21 State Board a strong board. We consider ourselves advocates for  
22 children in the State of California.

23 I, like Mr. Malkasian, have been in contact with  
24 Superintendent-elect Delaine Eastin. We agree on many things,  
25 and one of the main things we agree on is that many of our  
26 students, the majority of the students coming out of high school  
27 do not go to college and are not equipped for the world of work.  
28 And we feel that California needs to do something about that,



1 and she is very interested in perpetuating educational  
2 technology and vocational education, which has been dying in  
3 California for the past 20-some years.

4 And I would love to remain on the Board because I  
5 feel that I have a voice. And she said to me, "I have an ally  
6 in you," and I said, "Yes, you have."

7 I don't feel we're going to have the problems we have  
8 had in the past. We have to cooperate. And the main problems  
9 that we had during the Honig and Carrabino days were personality  
10 conflicts. And if you could have attended some of the meetings,  
11 you would know what I'm talking about. They battled backwards  
12 and forward.

13 The Board now is more stabilized, although we do not  
14 have our full complement. We're more stabilized. We're ready  
15 to work with Superintendent-elect Eastin. She came before us a  
16 few weeks at our last meeting last month. She is coming --  
17 we're meeting with her next week.

18 And the system of the four superintendents, I agree  
19 with Mr. Malkasian, if I was going to be in charge of something,  
20 I certainly would want to select the people that I was going to  
21 work with, because there you feel that you have people who will  
22 be cooperative with you.

23 CHAIRMAN LOCKYER: So you think you can work that out  
24 with her?

25 MS. THOMAS: I think we can work that out with  
26 Delaine. I feel very confident that we can, because I don't  
27 think we have any members on the Board who want to push for  
28 anything else. And I feel that she understands that, and we





1 will cooperate. She nominates them, and we appoint them. And I  
2 don't think that, the type of person she is, that she would  
3 appoint anyone who thought differently than she does. So, she's  
4 a strong advocate for education, and her appointees will be  
5 strong advocates for education. And the Board can't go any  
6 other way because we're advocates for education of the children  
7 in this state.

8 CHAIRMAN LOCKYER: What do you think are the two or  
9 three greatest challenges to education in California?

10 MS. THOMAS: The first one is bilingual education, in  
11 my opinion.

12 CHAIRMAN LOCKYER: What's the problem there?

13 MS. THOMAS: The young people who come in our state  
14 who do not speak English after the elementary school, we have  
15 had students come in at the junior level and the secondary, the  
16 high school level, but many of them learn English because they  
17 want to learn English.

18 We had a young man, Mr. Kim, who was a member of the  
19 Board, who came here at 14 years old, did not speak a word of  
20 English. Learned to speak English; ended up being appointed to  
21 the State Board of Education and as a senator.

22 And that's the problem. If the young people don't  
23 speak English, we have to provide a way for them to speak  
24 English if we expect them to succeed.

25 Many of the districts now have assistants or aides in  
26 the classroom who speak the primary language who can help the  
27 young people. But they have to learn English.

28 CHAIRMAN LOCKYER: What are we not doing now that you



1 would want to change?

2 MS. THOMAS: I would want to see us hire more aides,  
3 because we do not have the teachers in this state who speak all  
4 the different languages and dialects that we have in the  
5 schools. And if we can hire aides, persons who speak their  
6 language, then we have a chance to help those young people.

7 CHAIRMAN LOCKYER: What was the Stockton dispute  
8 about?

9 MS. THOMAS: That was a dispute within the district,  
10 and you have on both sides of the table, you have people who  
11 want bilingual education, you have teachers who don't want it.  
12 And they're saying if the students haven't learned it by the  
13 time he's in fifth grade, if he starts elementary school here,  
14 and the Stockton dispute centered around that. And it was  
15 really strong, I'll say. We had advocates on both sides.

16 CHAIRMAN LOCKYER: What were they arguing about?

17 MS. THOMAS: The system of teaching bilingual  
18 education.

19 CHAIRMAN LOCKYER: Did somebody want to make it  
20 different?

21 MS. THOMAS: I would think so.

22 CHAIRMAN LOCKYER: How did they want to change it?

23 MS. THOMAS: They wanted the young people to be in  
24 the classroom for a certain number of years. Other people say  
25 leave them in as long as it takes them to learn English.

26 CHAIRMAN LOCKYER: You mean, they'd be in the other  
27 language classroom?

28 MS. THOMAS: Yes.



1 CHAIRMAN LOCKYER: For a length of time?

2 MS. THOMAS: Yes.

3 CHAIRMAN LOCKYER: And the other argument was, get  
4 them into English more quickly?

5 MS. THOMAS: As soon as you can.

6 CHAIRMAN LOCKYER: Now, do you think the State Board  
7 is likely to change whatever your current approach to that?  
8 What is your current approach to that?

9 MS. THOMAS: The current approach at this time is on  
10 the local level. And the young people learn the English either  
11 in first, second, third, fourth, fifth grade, and then they're  
12 equipped to go into high school. That, to me, is the way it  
13 should be.

14 And if a student comes into the state older, into the  
15 country at an older age and doesn't learn -- and does not speak  
16 English, then he should get some special attention to help him  
17 learn English.

18 CHAIRMAN LOCKYER: Does any of that require changing  
19 your policy at the Board level?

20 MS. THOMAS: I don't think so.

21 CHAIRMAN LOCKYER: So, this discussion that's coming  
22 up, I guess, next week --

23 MS. THOMAS: Yes.

24 CHAIRMAN LOCKYER: -- will that result in a change,  
25 or what's likely there?

26 MS. THOMAS: I'm not on the administrative committee  
27 because I chair the legislative committee, and I miss a lot of  
28 their discussions.





1 But I do feel that the strong side is to maintain,  
2 that we should maintain our policy of bilingual education in  
3 this state.

4 CHAIRMAN LOCKYER: That's your own philosophy?

5 MS. THOMAS: That's my philosophy.

6 CHAIRMAN LOCKYER: I guess one of the recent debates  
7 in the state has been about privatizing or voucher education.  
8 What's your thought about that?

9 MS. THOMAS: I think we have a good education system  
10 in this state. I don't think we need to, quote-quote, "throw  
11 the baby out with the bath water."

12 If there are problems in it, let's improve them, but  
13 not let's just destroy the whole system.

14 SENATOR LEWIS: Can I ask a follow-up to that  
15 question?

16 CHAIRMAN LOCKYER: Sure.

17 SENATOR LEWIS: Did the State Board of Education,  
18 didn't you pass a resolution in opposition to Prop. 174, the  
19 state voucher initiative?

20 MS. THOMAS: Did we pass a resolution?

21 SENATOR LEWIS: Yes.

22 MS. THOMAS: That was a long time ago, let me think.  
23 But I know the state did not -- the State Board did not support  
24 the voucher.

25 SENATOR LEWIS: Yes, but my recollection was that the  
26 State Board of Education actually passed a resolution in  
27 opposition to Prop. 174.

28 MS. THOMAS: We were opposed to it.



1 SENATOR LEWIS: Was it a unanimous vote?

2 MS. THOMAS: I can't remember that, John.

3 SENATOR LEWIS: Thank you.

4 CHAIRMAN LOCKYER: Other questions from Members?

5 I'd suggest the same thing here, that we perhaps hold  
6 it, give it a week to just let everyone mull. We have a short  
7 time here, so it'll have to be, I believe again, next Monday.

8 SENATOR PETRIS: We haven't heard from Alameda yet.

9 CHAIRMAN LOCKYER: No, we haven't. We'll note for  
10 the record that that is Senator Petris's district.

11 MS. THOMAS: Yes, it is.

12 CHAIRMAN LOCKYER: I don't have anything further.  
13 Did you want to add anything? You heard kind of a lot of the  
14 questions we asked --

15 MS. THOMAS: You asked Mr. Malkasian, and my answers  
16 are very similar because the Board is a united Board.

17 As I said, we don't have our full complement, but  
18 those of us who are there, we vote together, and we're  
19 interested in educating the children of California.

20 CHAIRMAN LOCKYER: All right, thank you.

21 MS. THOMAS: Thank you, and thank you for your  
22 patience.

23 [Thereupon this portion of the  
24 Senate Rules Committee hearing  
25 was terminated at approximately  
26 4:40 P.M.]

27 --oo0oo--  
28




CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 10<sup>th</sup> day of January, 1995.

  
EVELYN J. MIZAK  
Shorthand Reporter







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APPEARANCESMEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

S. WILLIAM MALKASIAN, Member  
State Board of Education

GERTI B. THOMAS, Member  
State Board of Education

JAMES T. RUDE, Member  
Industrial Welfare Commission

ROBERT A. ALLEBORN, Member  
Board of Governors  
California Community Colleges

DAVID MERTES  
California Community Colleges

MICHAEL STENNIS, Member  
Trustees of the California State University

STACEY GREEN, Chair  
California State Student Association

ROSIE B. GARCIA, Warden  
California State Prison, Centinela

SENATOR HENRY MELLO



APPEARANCES (Continued)

FRANK R. SEARCY, President  
Chicano Correctional Workers Association

HELEN LOPEZ, Chair  
Centinela Citizens Advisory Committee

MORGAN SNYDER, 8th Grade Representative  
Simi Elementary School

GENE BRISTER, Mayor  
City of El Centro

ROY MABRY, State President  
California Association of Black Correctional Workers

LINDON LEWIS  
California Department of Corrections

MARK T. GRAN, Mayor  
City of Imperial

ANITA PEREZ, San Quentin Chapter  
Chicano Correctional Workers Association

RAY CASTILLO, Community Resource Manager  
Centinela State Prison  
President, Imperial Chapter  
Chicano Correctional Workers Association

JIM GOMEZ, Director  
California Department of Corrections

BILL CONDIT, President  
Board of Directors  
Imperial Irrigation District

DON NOVEY, State President  
California Correctional Peace Officers Association

MIKE JIMENEZ, Executive Vice President  
California Correctional Peace Officers Association

JEFF THOMPSON  
California Correctional Peace Officers Association

ALBERT B. GERVIN, Centinela Chapter President  
California Correctional Peace Officers Association



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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Our next item is, first, to deal with some of the holdover confirmations. We've had extensive interviews with some of the nominees or appointees in previous weeks, mostly last week. So, we need to come to a conclusion.

First, Members, the first item is Mr. Bill Malkasian for the State Board of Education.

Are there any thoughts or comments that Members would wish to make before proceeding to a vote on this matter? What is the pleasure of the Committee? Senator Beverly.

SENATOR BEVERLY: I'll recommend confirmation.

CHAIRMAN LOCKYER: We have a motion recommending confirmation of Mr. Malkasian to the State Board of Education.

I would only make this brief comment first, which is, I think both of the individuals being reappointed have demonstrated a desire to avoid the potential for confrontation and dispute between the State Board and the new Superintendent of Public Instruction. That attitude and approach is absolutely essential to educational progress in this state, and it's one of several considerations, but a weighty one in my own mind, and one of the reasons that I support their reconfirmation.

Let's call the roll.

SECRETARY WEBB: Senator Ayala.

SENATOR AYALA: Aye.

SECRETARY WEBB: Ayala Aye. Senator Lewis.

SENATOR LEWIS: Aye.

SECRETARY WEBB: Lewis Aye. Senator Petris.



1 SENATOR PETRIS: Aye.

2 SECRETARY WEBB: Petris Aye. Senator Beverly.

3 SENATOR BEVERLY: Aye.

4 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

5 CHAIRMAN LOCKYER: Aye.

6 SECRETARY WEBB: Lockyer Aye. Five to zero.

7 CHAIRMAN LOCKYER: We might just quickly take up  
8 Gerti Thomas, Item Number Three, which is the second  
9 reappointment to the State Board of Education.

10 SENATOR BEVERLY: Same motion.

11 CHAIRMAN LOCKYER: Same motion. Any comments from  
12 Members?

13 This is a constituent of Senator Petris, as we might  
14 note for the record.

15 Call the roll, or would there be any objection to  
16 substituting the previous unanimous roll? All right, that'll be  
17 the order.

18 [Thereupon the previous roll  
19 was substituted, and the  
20 confirmation was recommended  
21 with the vote of 5-0.]

22 CHAIRMAN LOCKYER: Number Two, James T. Rude, a  
23 member of the Industrial Welfare Commission.

24 Perhaps it would be appropriate for me to introduce  
25 this topic by making a very brief comment.

26 I've been persuaded by those who testified against  
27 the confirmation last week that that would be the most  
28 appropriate course. Mr. Rude brings intelligence and energy to





1 his assignment. However, I'm afraid that he may have lost sight  
2 of the basic purpose of the Industrial Welfare Commission.

3 Even though he was an employer representative on the  
4 Commission, and I think that the employer community is entitled  
5 to active representation, it was my view that the duty that he  
6 had to provide for minimum wages and the general welfare of  
7 employees in California was lost as he became increasingly an  
8 employer advocate rather than a person with a duty to provide  
9 for the welfare of all employees in the state.

10 There are numerous specific issues: the failure to  
11 adequately consider and review increases of the minimum wage;  
12 the 12-hour work day rules and other matters.

13 Perhaps it would have worked, because, I'll note for  
14 the record that Don Novey is the other employee representative  
15 on that panel, and he has done a superb job, I think with the  
16 appropriate balance.

17 My point is that if the public member had been  
18 appointed, it's been vacant for just about a year now, and  
19 absent the public member, it's a Commission that tends to just  
20 bifurcate into employer and employee representations with no  
21 glue to pull it together and effectuate a consensus. So, part  
22 of the problem here, part of Mr. Rude's problem, is that the  
23 Governor failed to appoint anyone for a year to the public  
24 member position.

25 I am sure that the Governor will wish to use his many  
26 talents and abilities in some more appropriate setting.

27 To my friends in the employer community, I don't wish  
28 to start the year on a discordant note, but feel that the job



1 wasn't being done in the way that the law demands.

2 Did any other Members of Rules wish to make any  
3 comments at all? Senator Beverly.

4 SENATOR BEVERLY: I agree with much of what you said.  
5 I disagree with your conclusion because it is an employer  
6 representative.

7 I would move confirmation.

8 CHAIRMAN LOCKYER: We have a motion. Please call the  
9 roll.

10 SECRETARY WEBB: Senator Ayala.

11 SENATOR AYALA: No.

12 SECRETARY WEBB: Ayala No. Senator Beverly.

13 SENATOR BEVERLY: Aye.

14 SECRETARY WEBB: Beverly Aye. Senator Lewis.

15 SENATOR LEWIS: Aye.

16 SECRETARY WEBB: Lewis Aye. Senator Petris.

17 SENATOR PETRIS: No.

18 SECRETARY WEBB: Petris No. Senator Lockyer.

19 CHAIRMAN LOCKYER: No.

20 SECRETARY WEBB: Lockyer No. Three to two.

21 CHAIRMAN LOCKYER: The matter will be held in the  
22 Rules Committee.

23 I think we probably should jump to Item Numbers Four  
24 and Six, if we do them expeditiously, so that those folks don't  
25 have to wait quite as long.

26 Robert Alleborn, if you'll come on up. Maybe you  
27 could start by helping me know how to pronounce your name.

28 MR. ALLEBORN: Al-la-born. It's probably easier if



1 you spelled it A-l-b-o-r-n. It's easier to pronounce it that  
2 way.

3 CHAIRMAN LOCKYER: Did you want to begin with a brief  
4 statement of your own, sir?

5 MR. ALLEBORN: I'll be happy to fill you in, but I  
6 think you probably have my information there.

7 I'm from Orange County, California, a resident of  
8 Newport Beach. Born and raised in the State of California, and  
9 have, over the last several years, shown a great deal of  
10 interest in education and sit on a board of two other  
11 universities as advisory to the universities.

12 And I'm happy to be here an answer any questions I  
13 can about myself in reference to my qualifications as a Board of  
14 Governors for the community college system for the State of  
15 California.

16 CHAIRMAN LOCKYER: Well, why don't we start with one  
17 that's always a favorite for us, and that's student fees. Any  
18 comments or observations with respect to the situation and the  
19 increases in student fees over the last few years?

20 MR. ALLEBORN: Well, my feeling is, having attended  
21 many of the Board meetings over the last ten months of the  
22 community colleges, that we still have a deferred maintenance  
23 and capital improvement program that is dearly needed for the  
24 young adults going through our systems at the community college.

25 And I feel that the fees are adequate at this point  
26 in time, and that if you were to reduce the fees, we might  
27 jeopardize any of this deferred maintenance, and capital  
28 improvements are needed for our young adults.





1 CHAIRMAN LOCKYER: Can you quantify, even if it's  
2 just an impression, how much of the potential revenue from fees  
3 would be dedicated to either deferred maintenance or new capital  
4 outlay?

5 MR. ALLEBORN: I'm unable to answer that question.

6 CHAIRMAN LOCKYER: Does the administration have a  
7 plan for that kind of expenditure?

8 MR. ALLEBORN: There is a plan. It has been, as I  
9 mentioned earlier, deferred maintenance has been a serious  
10 situation for the community colleges, as well as the capital  
11 improvements, to be competitive for our young adults.

12 CHAIRMAN LOCKYER: I guess, to maybe only be a little  
13 bit contentious, I understand we are the ones that enact the  
14 fee, not you.

15 MR. ALLEBORN: That's correct.

16 CHAIRMAN LOCKYER: You may recommend it.

17 We're told that the chief executive and others would  
18 wish to cut income and corporate taxes by, perhaps, as much as  
19 15 percent.

20 I would only note that the Governor has raised taxes  
21 about two dozen times in the last four years. It would seem to  
22 me we ought to repeal some of the tax increases before we start  
23 cutting at the top.

24 This is one of, at least in my view, the most onerous  
25 tax increases that we've enacted in the last four years. If we  
26 don't give all that money away to millionaires, sir, maybe we'll  
27 have some more of it for deferred maintenance and capital  
28 outlay, as you would wish.



1 All I can suggest you do is help us persuade others  
2 that need persuasion about their priorities.

3 MR. ALLEBORN: I'm not quite sure how to answer that  
4 question. It's difficult.

5 CHAIRMAN LOCKYER: That's all right. I was just sort  
6 of fishing, you know.

7 MR. ALLEBORN: My basic concern is that we keep our  
8 buildings and plant equipment up to standards and we provide the  
9 capital improvements with the classroom equipment so we can  
10 educate young adults for the future of our state. And that's  
11 the primary reason that I'm here, trying to answer this  
12 question, sir.

13 CHAIRMAN LOCKYER: What was the hardest decision you  
14 had to make during your tenure so far?

15 MR. ALLEBORN: Probably the nominations for President  
16 of the Board of Governors, but that is behind us now, and we're  
17 unified and ready for this coming year, subject to --

18 CHAIRMAN LOCKYER: So, your kind of internal  
19 politics?

20 MR. ALLEBORN: Well, that always occurs at times.

21 I think also attempting to understand the system,  
22 which has been an experience itself.

23 CHAIRMAN LOCKYER: It's tricky in the sense that,  
24 here you are, a statewide group, that is essentially a local  
25 system with all the local community college districts.

26 MR. ALLEBORN: Yes.

27 CHAIRMAN LOCKYER: And a kind of a tension between  
28 state and local that's pretty important.



1 MR. ALLEBORN: Yes, it is, because we try to set the  
2 policy, to pass the policy on to the local community college  
3 board of trustees.

4 CHAIRMAN LOCKYER: Do they seem generally amenable to  
5 your suggestions?

6 MR. ALLEBORN: I think they have their independence,  
7 as they are by charter, but I think that there's a better line  
8 of communication, at least in my observation, since I was  
9 appointed to the Board, between the Board of Governors and the  
10 local trustees. There's more of a flow of information and more  
11 joint meetings in which we're very productive in the recent --  
12 in the last year.

13 CHAIRMAN LOCKYER: Some have thought that the Board  
14 of Governors sometimes can't resist the temptation to  
15 micro-manage the Chancellor's Office, since it's the most direct  
16 influence that you have.

17 Is that a fair comment?

18 MR. ALLEBORN: I think that's been a fair comment in  
19 the past, and I would say it would not be a fair comment in the  
20 future.

21 I think we've done a lot in this last year to work  
22 better on the communication with the Chancellor between the  
23 Board of Governors, and that we would work more on policy and  
24 not micro-manage the system.

25 CHAIRMAN LOCKYER: Are there other questions from  
26 Members? Senator Petris.

27 SENATOR PETRIS: The Chair has covered this. I  
28 wanted to touch on it a little more, the fee question.





1           As he pointed out, we're the ones who ultimately have  
2 to approve it or disapprove, but I'm troubled by the shift in  
3 the responsibility from the general public in great measure now  
4 to the students throughout our system: community colleges, the  
5 U.C. system, and Cal. State. They've all been hit very hard  
6 with fee increases.

7           In the case of the community colleges, it's meant --  
8 we don't have statistics or a very deep analysis -- but the  
9 colleges have done some kind of study, or the administration,  
10 that indicates a drop of 155,600 students. Some of them quit  
11 because the fees went up, and others quit because courses were  
12 eliminated, and there're probably other reasons, too.

13           I'd like to correct that. I'd like to see us reduce  
14 those fees and attract more students.

15           I'm reminded of a comment made by Governor Pat Brown.  
16 I happened to be with him when he was visited by a large group  
17 of businessmen from around the state; there were about 100 or  
18 200. And he was asked what he felt his number one achievement  
19 was as Governor, and he said education. And they asked him to  
20 elaborate. And he said, "Well, at this moment that I'm speaking  
21 to you, 40 percent of the population of this state is in school,  
22 in the public schools." He said, "If we maintain the  
23 percentage, and hopefully increase it, the hopes for this state  
24 are very great in the future."

25           Now, I don't know what the percentage is now, but I'm  
26 sure it's taken quite a drop just with this one move.

27           I bring that out to illustrate my agreement with his  
28 emphasis on encouraging as many of our people to be in school as



1 possible. Now, that 40 percent, I'm sure, included adult  
2 education, which was one of his pet projects, and, you know,  
3 night schools, and everything from kindergarten to the highest  
4 graduate level.

5 And it seems to me that that's been our goal over the  
6 years, and we've lost sight of it because we caved in on this  
7 financial national recession and made a lot of sacrifices in the  
8 meantime.

9 Is there any sentiment on your Board that you can  
10 detect for trying to turn that around?

11 MR. ALLEBORN: I can't speak for the Board entirely,  
12 but I can speak for myself and the fact that I feel that at an  
13 appropriate time, things could possibly come down. But at the  
14 current time, I am concerned about deferred maintenance, and I  
15 am concerned about capital improvements so that our young adults  
16 can have the finest education for our state and for our country.

17 I realize that the fees are a very small portion of  
18 the overall cost of running the colleges, but in balancing it  
19 correctly, every little dollar does count.

20 SENATOR PETRIS: How many years behind are you on the  
21 deferred maintenance?

22 MR. ALLEBORN: To my knowledge, about two years.

23 SENATOR PETRIS: That's not bad at all. I think the  
24 other systems are several years more than that. That doesn't  
25 give us much comfort.

26 So, if you got a windfall of a large amount of money,  
27 would the Board put it first in deferred maintenance and capital  
28 outlay?



1 MR. ALLEBORN: I think that's for the Legislature to  
2 make that determination.

3 SENATOR PETRIS: I understand that, but we usually  
4 look to you for recommendations also.

5 MR. ALLEBORN: It would be my recommendation, as a  
6 voting member of the Board, to put it towards deferred  
7 maintenance and capital improvements.

8 SENATOR PETRIS: Thanks.

9 CHAIRMAN LOCKYER: Senator Ayala.

10 SENATOR AYALA: What is the relationship between your  
11 governing Board and the so many local boards that govern  
12 community colleges?

13 MR. ALLEBORN: We're a policy setting board.

14 SENATOR AYALA: You set policy.

15 MR. ALLEBORN: Policy setting board for the community  
16 college system for the state.

17 Each of the local trustees have their own respective  
18 colleges to manage and run.

19 SENATOR AYALA: Is your policy binding on local  
20 community colleges?

21 MR. ALLEBORN: It is not binding.

22 SENATOR AYALA: What purpose does the Board serve if  
23 they're not binding on local college boards? What is your  
24 function?

25 MR. ALLEBORN: Maybe I might defer that question to  
26 Dr. Mertes, since I'm new on the Board.

27 CHAIRMAN LOCKYER: You see, he's learned to defer to  
28 the staff. That's a good start.





1 [Laughter.]

2 DR. MERTES: Senators, do I get confirmed if the  
3 answer's the appropriate one?

4 [Laughter.]

5 DR. MERTES: Senator Ayala, yes, the Board policy,  
6 there are different levels. Some are set by the Legislature,  
7 and we implement. There are some that are delegated to the  
8 Board that we put into statute locally, our own policies. That  
9 is also binding on the boards or on local districts. There are  
10 some that are guidelines. Those are voluntary on behalf of the  
11 local jurisdictions, so it is a mixture.

12 SENATOR AYALA: The tuition, again, that is directed  
13 from the Legislature?

14 DR. MERTES: Yes. The Legislature sets the total  
15 tuition that we're permitted to levy on students.

16 You can also put around that that the dollars be used  
17 for specific purposes: for capital outlay; for instructional  
18 equipment. And that is binding on all of the districts that are  
19 community college districts now.

20 SENATOR AYALA: What about additional fees for  
21 parking and health benefits, whether they're needed or not? You  
22 charge the students anyway. Is that at the local level?

23 DR. MERTES: Yes. What the Legislature has  
24 authorized as permissive fee, and which, for example, with  
25 parking, you can go up to a certain level, but you can't exceed  
26 that level. The same is true with the health fee. There is  
27 also a permissive supply fee.

28 And the local boards of trustees, by vote, set the



1 level of the parking fee, the health fee, and the policy for  
2 supplies fees.

3 SENATOR AYALA: At the local level, they implement  
4 that fee schedule.

5 DR. MERTES: Yes.

6 SENATOR AYALA: And they can charge a fee to a  
7 student, whether that student uses that service or not?

8 DR. MERTES: In terms of parking, that is correct.

9 In terms of health fee, it's mandatory in terms of  
10 the health fee.

11 There is discretion at the local level as to how  
12 that's implemented.

13 SENATOR AYALA: The students, or the residents,  
14 declare that they go to a certain district community college.  
15 They can transfer from one district to another if both districts  
16 agree on that?

17 DR. MERTES: At the present time, there is free flow  
18 throughout the state, and so students can go to any community  
19 college in the state that they want to.

20 SENATOR AYALA: Any community college you want in the  
21 state?

22 DR. MERTES: That's correct. In previous times,  
23 there were restrictions. You could only go to the college in  
24 your district. That has been eliminated and there's total free  
25 flow.

26 SENATOR BEVERLY: I had the first bill on it. It's  
27 wide open since then.

28 DR. MERTES: I'm sorry, sir?



1           SENATOR BEVERLY: That free flow policy is basically  
2 wide open now.

3           DR. MERTES: Yes, it is.

4           SENATOR BEVERLY: My bill limited free flow, as I  
5 remember it.

6           DR. MERTES: Yes, it's totally open now.

7           SENATOR AYALA: That includes athletes?

8           DR. MERTES: Athletes are a little bit different.  
9 There are restrictions around recruitment of athletes, and that  
10 is an exception to the general statement that I just made.

11          SENATOR AYALA: Thank you very much.

12          CHAIRMAN LOCKYER: Other questions?

13          Is there anyone present who would wish to comment at  
14 all or oppose?

15          What is the pleasure of the Committee?

16          SENATOR LEWIS: Move confirmation.

17          CHAIRMAN LOCKYER: We have a motion by Senator Lewis  
18 to confirm this fellow, also from Orange County.

19          Call the roll, please.

20          SECRETARY WEBB: Senator Ayala.

21          SENATOR AYALA: Aye.

22          SECRETARY WEBB: Ayala Aye. Senator Lewis.

23          SENATOR LEWIS: Aye.

24          SECRETARY WEBB: Lewis Aye. Senator Petris.

25          SENATOR PETRIS: Aye.

26          SECRETARY WEBB: Petris Aye. Senator Beverly.

27          SENATOR BEVERLY: Aye.

28          SECRETARY WEBB: Beverly Aye. Senator Lockyer.





1 CHAIRMAN LOCKYER: Aye.

2 SECRETARY WEBB: Lockyer Aye. Five to zero.

3 CHAIRMAN LOCKYER: I'm a little bit torn. I don't  
4 know quite what to do.

5 We have two more confirmations to hear today, and  
6 there's a lot of business, which is clearly not going to get  
7 completed by 4:30, which is when we're expected to report  
8 because of the State of the State Address that's happening this  
9 afternoon at 5:00.

10 I believe Mr. Stennis would probably be fairly brief,  
11 but I'm worried bout the fact that there's a lot of testimony  
12 with respect to Warden Garcia. I'll gamble and see if we can do  
13 both.

14 Mr. Stennis, why don't you come on up. This is Item  
15 Number Six in your file, Members.

16 MR. STENNIS: Good afternoon, Mr. Chair.

17 CHAIRMAN LOCKYER: Good afternoon, sir.

18 Did you want to start with any preliminary comment?

19 MR. STENNIS: Well, first of all, I'll keep it brief.  
20 First of all, I'm glad for the opportunity to come here in front  
21 of your committee.

22 I've been on the CSU Board for about a year now. The  
23 two main reasons that I wanted to be and enjoy being on this  
24 Board, one reason is my father was a Trustee for 16 years. He  
25 was appointed by Jerry Brown, and he was then reappointed by  
26 Deukmejian. And I guess I'm the only heir Trustee, or second  
27 generation Trustee. He passed away a year ago, but everytime I  
28 sit in those chairs in Long Beach, he's up there, smiling down.



1 And now Claudia Hampton's with him, and I see him doing this to  
2 me.

3 The other reason, which is real important, is that  
4 being a small businessman in South Central Los Angeles, being  
5 African-American, I see my community slowly but surely  
6 deteriorating. I see my people, my young males and females, and  
7 the people that are coming into the community, I see that the  
8 look on their faces is a look of hopelessness.

9 And I know, I know, that basically the only  
10 opportunity that we have as a people and as a community to move  
11 forward, to grow, to make the inner cities better, is through  
12 education. And if they don't have an opportunity to attend  
13 college, and the CSU system is the best opportunity, as well as  
14 the community college system, for them to attend a college. And  
15 whether they're there for four years, if they're there for a  
16 year, the knowledge and the experience that they gain, and they  
17 go back to the community, it spreads.

18 And that's the only way we're going to get better.  
19 That's the only way the overall pyramid is going to get better.  
20 Education is the only way.

21 That's cutting everything as brief as I can.

22 CHAIRMAN LOCKYER: That's appropriate.

23 Let me ask if there are questions from Members?

24 I'll begin with the student fee question, just to try  
25 to understand your perspective. Now, I note that you cast a  
26 vote very early, probably your first meeting, maybe --

27 MR. STENNIS: Yes.

28 CHAIRMAN LOCKYER: -- where the President had



1 suggested a 10 percent fee increase this year.

2 I'm distressed by that. I'll just tell you that as I  
3 look at the numbers, the general fund support for the university  
4 in the last four years declined 3.3 percent, a total of \$53  
5 million.

6 Student fee revenue is 400 percent, that is four  
7 times the amount. It increased 58 percent, about 211.

8 So, student fees didn't just make up for the cut in  
9 general fund. They became a source of new revenues, and of  
10 course, the fees doubled.

11 My personal view is, we can't continue down that  
12 path, and we have to figure out ways to economize without just  
13 continually relying on fees.

14 But that's the speech from this side of the table. I  
15 would welcome any thoughts or comments you have about the  
16 situation our university's in.

17 MR. STENNIS: Well, being brief again, I'm against  
18 students fees because those higher fees are exactly affecting  
19 the people that I think most need the opportunity to go to  
20 college.

21 Being a new Trustee and new Board member, the one  
22 thing that I plan to do is try to give as much influence as I  
23 can, coming from the inner city, coming from the bottom, to try  
24 to change this continued fee increase.

25 I mean, if you raise it 10 percent, next year it's  
26 15, next year it's 16, next year it's 20 because it's done.

27 So, I plan to work as hard as I can with the  
28 resources that I have, and the knowledge that I have, to try to,





1 you know, turn that around as best as I can.

2 CHAIRMAN LOCKYER: Well, I think we would all  
3 encourage you.

4 The pattern, you're right. A 20 percent increase,  
5 then a 40 percent, then a 10, then a 10, and on and on.

6 MR. STENNIS: It just keeps going.

7 CHAIRMAN LOCKYER: Yes.

8 Other inquiries? Senator Petris.

9 SENATOR PETRIS: I'm in full accord with the Chair's  
10 views. I just want to reinforce it from my position.

11 When we first imposed fees a few years ago, the  
12 example of the State of Oregon was used as one university system  
13 that imposed fees. But that had been several years before, and  
14 I pointed out at the time in opposing fee increases for  
15 students, that the pattern we get into is the one you pointed  
16 out. Once you open that door for student reliance on the fees,  
17 we just naturally turn to it, and it goes from a small  
18 percentage to a larger one, and pretty soon it becomes enormous.

19 My position is, we never should have gone that way in  
20 the first place. The history of this state has been one of  
21 limiting the charges to students as much as possible and make  
22 them as low as possible.

23 The great U.C. system; I think one of its reasons for  
24 being great was not just the faculty, but the variety, and the  
25 scope, and the economic sector of the students that it's been  
26 able to attract over a period of many years.

27 I think in the last three or four years, we've seen a  
28 reversal of that. Now we might as well privatize it. It's



1 about \$4,000 a year at U.C., and Cal. State is fast catching up.

2 Now, I think your observations are very accurate.  
3 The question is, what can you do about it, or are you willing to  
4 do?

5 Let me just suggest. I've said this to other Board  
6 members. I don't know how well it works.

7 First of all, you're appointed by the Governor, and  
8 that's quite an honor, to have the confidence of the governor in  
9 a state this big. It means you've really done something to  
10 deserve it.

11 I would urge you to keep communicating with the  
12 Governor. I don't know how much he hears from people who say,  
13 "Find the money some how. Don't raise the fees."

14 So, we need help as a legislative body from the state  
15 boards and all the institutions to try to persuade the Governor  
16 to stop increasing these taxes on students.

17 It means an alternative source; maybe it means  
18 taxes. But we shouldn't be so horrified about the mention --  
19 some of them are so bad, they won't even use the name. It's the  
20 "t" word. That's a lot of nonsense.

21 Oliver Wendell Holmes said, you know, he's happy to  
22 pay taxes; it's the price of civilization.

23 I guess we don't like the civilization any more, so  
24 the common theme now is, don't raise taxes, ever, and cut the  
25 ones we have.

26 Now, the Governor's proposing an across-the-board tax  
27 cut, I understand, 15 percent. I don't know if that was in his  
28 inaugural message; we might find out later today.



1 I don't know how we can do that at a time when we're  
2 dumping so much of the burden on the students. We should be  
3 increasing rather than decreasing it.

4 I know there is a school that says, when you cut  
5 taxes, you bring in more money. Sometimes that works; sometimes  
6 it doesn't. I'm not willing to gamble.

7 Can you tell me what you and the Board are doing, or  
8 can do, to reverse this trend?

9 MR. STENNIS: Well, basically, you know, giving the  
10 Governor a tin ear; saying, you know, we can't. We have to face  
11 the student representatives at our Board meeting. We have to  
12 face the students when I go to the campuses.

13 I think that the most important thing that I feel  
14 might help along those lines is for the Trustees and the  
15 students and the universities to get together, but as a unit,  
16 saying: listen, we can't afford to continue to raise fees. As  
17 a unit. And, you know, strength in numbers.

18 We haven't tried it. Let's try it.

19 SENATOR PETRIS: What are the prospects of trying it?

20 MR. STENNIS: Well, if I'm confirmed, I'm going to  
21 fight as hard as I can to try to get that done. I know that I  
22 can't do everything, but I think if I can attach two or three  
23 important issues to me, and fight for it, maybe I can get  
24 something done.

25 I know that the people that are affected the most by  
26 fee increases are the people that look like me.

27 SENATOR PETRIS: How about the business community?  
28 You're president of a successful operation. Can you get some





1 help from the general business community?

2 I think the bigger companies have shown a lot of  
3 support. A lot of them have adopted individual high schools,  
4 for example. The Business Roundtable came in with an excellent  
5 report on the need for supporting public education, but it needs  
6 to be a continuing thing called to the attention of the  
7 Governor. Since he has a lot of friends in the leadership of  
8 the business community, I would think an approach might be made  
9 from that sector as well.

10 Do you agree with that?

11 MR. STENNIS: Yes, it's a very good idea.

12 SENATOR PETRIS: Can you work on that, too?

13 MR. STENNIS: Sure, sure.

14 SENATOR PETRIS: Good, I'll make notes.

15 MR. STENNIS: Give me some names.

16 SENATOR PETRIS: The policy adopted by the Board that  
17 the students should pay one-third of the total cost, and the  
18 taxpayers pay the rest, that's never been adopted by the  
19 Legislature. There've been suggestions, but we've never gone  
20 for that.

21 That puts us in the same risk as the problem you  
22 mentioned earlier, that once you establish it, why a third?  
23 Times are tough. Why don't we go to two-thirds eventually? I  
24 see that as a big risk.

25 Are you in favor of that policy? I've heard  
26 proposals made in public of going to 50 percent in some of our  
27 institutions.

28 MR. STENNIS: Well, yes. I think that to set a



1 percentage for someone's education, that fact is, for that  
2 percentage to grow is so easy, you know? It's so easy, as you  
3 say.

4 So, no, I don't necessarily agree with that  
5 one-third. I don't know how they came up with the one-third, me  
6 being a new Board member. But I know that when my father was a  
7 Trustee, it wasn't one-third. It was a lot less.

8 And as you say, I think we need to look at other  
9 avenues as far as funding the colleges. I think we're all aware  
10 of that as Trustees.

11 I also feel that with a joint effort between the  
12 Trustees, and the presidents, and the students, we could try to,  
13 you know, enforce the fact that we want to try to keep the fees  
14 as low as possible, not going up, and go to other areas. If we  
15 can have the private sector fund art centers, and things like  
16 that, why can't some of the private sector fund some of the  
17 education of these students? It's only going to benefit the  
18 businesses in the private sector in the area where the school is  
19 going to flourish.

20 SENATOR PETRIS: A lot of them are doing it. They're  
21 doing it in my district, and I really admire them. There's a  
22 lot of leaders in the business community who have stepped up to  
23 the plate.

24 I think that it might be more effective if they work  
25 more on the Governor. He's the one that makes the budget that's  
26 presented to us. We'd get results a lot faster than some small  
27 contributions, individually, to one school district or another.

28 You get to visit much with students? Do you get much



1 chance to do that?

2 MR. STENNIS: Yes, I do. Not to take this -- I'm on  
3 a few mentor programs that deal with high school seniors that  
4 are going to college. I try, as often as I can, to go to the  
5 schools that are in my area: Long Beach, Dominguez, Cal. State  
6 L.A., San Diego State when I get down in San Diego.

7 The one thing that I try to stress to the students is  
8 that they have to participate. You can't just start screaming  
9 when they get ready to raise student fees. You have to  
10 anticipate what's going on with your student government. You  
11 have to anticipate what's going on with the budget. You have to  
12 keep your head up and understand what's happening to your  
13 education in your university, and don't wait 'til it's too late.

14 You know, by the time the Governor makes his budget  
15 and sets it, there's not a whole lot that can be done by either  
16 one of us. But if we can get the students to be more involved,  
17 as we are involved, with their education and their colleges, you  
18 know, the transitional student, be it they have to drive back  
19 and forth, they still have to be involved. And if we get more  
20 involvement, things can only get better.

21 SENATOR PETRIS: Thank you.

22 CHAIRMAN LOCKYER: Senator Ayala.

23 SENATOR AYALA: Mr. Stennis, the student fees have  
24 risen more than half since 1990. I haven't heard anyone say  
25 that they support increasing student fees. If not, what then?  
26 What do we do then? We're short of funds. Eliminate classes?  
27 Eliminate the faculty members?

28 If we're not going to raise the fees, what are we







1 going to do to keep up with the cost of education?

2 MR. STENNIS: Well, some of the things that we  
3 discussed are ideas.

4 I think what we have to do, seeing as that this  
5 student fee increase is becoming a very popular topic, I think  
6 as a Board, as Trustees, and the Chancellor, and the presidents,  
7 I think we all need to sit down as a group, and with the  
8 community colleges governors, and come up with plans to address  
9 these areas.

10 SENATOR AYALA: In four years that started. When are  
11 we going to do that?

12 I understand what you're saying. Should we be  
13 providing jobs for the students to pay for the higher cost of  
14 going to school?

15 There's no more free lunches, you know. So,  
16 shouldn't your Board be more involved and up front with what we  
17 ought to be doing, and recommend to the Legislature areas of  
18 concern that you have, and how we should resolve them?

19 MR. STENNIS: You're right, Senator. We need to do  
20 that. We need to spend more time on the problem solving of fees  
21 and trying to make the university and the colleges better.

22 We need to look for the future and not just for next  
23 year.

24 SENATOR AYALA: When are we going to start?

25 MR. STENNIS: Well, if I get on the Board --

26 [Laughter.]

27 MR. STENNIS: Listen, I just -- I'm starting to fight  
28 now. I called George Foreman, and I got some boxing gloves.



1 CHAIRMAN LOCKYER: Other questions from Members?

2 Is there anyone present who would wish to make a  
3 comment?

4 MS. GREEN: My name is Stacey Green. I'm the Chair  
5 of the California State Student Association.

6 And while the Board has not officially taken a  
7 position in support or against Trustee Stennis, we would like to  
8 thank you for addressing some of the very tough questions that  
9 you've put out there. Those are many of the questions that we  
10 raise with the Trustees on a consistent basis.

11 And also, we'd like to encourage and express to you  
12 that it's very important any Trustees who are confirmed through  
13 this process be innovative leaders, people who are willing to  
14 take a chance to dissent from time to time when it's necessary,  
15 and especially to work in the interests of those of us who are  
16 on the cusp and on our way out of the CSU.

17 As you know, we've lost over 20,000 students in the  
18 last four years. And the commitment to retention programs and  
19 to educational equity programs has more recently moved to the  
20 chopping block. So, it's very important to us that Trustees  
21 have strategy, and have long-term goals that will not continue  
22 to diminish the quality of our experience in the CSU, but also  
23 push us out of the CSU entirely.

24 And we are here to thank you for an opportunity  
25 address you, and we appreciate you raising the questions that we  
26 submitted to the Committee. We'd like to continue to  
27 participate in the process every step of the way.

28 Thank you.



1 CHAIRMAN LOCKYER: Is there anyone else? Senator.

2 SENATOR BEVERLY: Are you supporting Mr. Stennis?

3 MS. GREEN: We're supporting any Trustees who are  
4 willing to take those steps that I put forward to you.

5 SENATOR BEVERLY: I take that as affirmative.

6 [Laughter.]

7 CHAIRMAN LOCKYER: Well, there are probably numerous  
8 other things we could ask about -- the tension between teaching  
9 and research, and so on and so forth -- but I think we have a  
10 clear sense of your enthusiasm for the job and many talents and  
11 abilities.

12 Let me ask the Committee if you're prepared to vote  
13 on this matter?

14 SENATOR BEVERLY: Move we recommend confirmation.

15 CHAIRMAN LOCKYER: We have a motion. Call the roll,  
16 please.

17 SECRETARY WEBB: Senator Ayala.

18 SENATOR AYALA: Aye.

19 SECRETARY WEBB: Ayala Aye. Senator Lewis.

20 SENATOR LEWIS: Aye.

21 SECRETARY WEBB: Lewis Aye. Senator Petris.

22 SENATOR PETRIS: Aye.

23 SECRETARY WEBB: Petris Aye. Senator Beverly.

24 SENATOR BEVERLY: Aye.

25 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

26 CHAIRMAN LOCKYER: Aye.

27 SECRETARY WEBB: Lockyer Aye. Five to zero.

28 CHAIRMAN LOCKYER: Congratulations.





1 MR. STENNIS: Thank you very much.

2 CHAIRMAN LOCKYER: Good luck.

3 MR. STENNIS: I'll need it.

4 CHAIRMAN LOCKYER: Item Number Five, Warden Garcia,  
5 and we'll start with Senator Mello.

6 SENATOR MELLO: Thank you very much, Mr. Chairman and  
7 Members.

8 I'm honored to be here today to introduce and urge a  
9 few words of support for a woman who's before you for  
10 confirmation of the Warden of Centinela Prison down in Imperial.

11 She is a product of the Salinas Valley in Monterey  
12 County, where she started her career in the Soledad institution.  
13 In fact, her being here today could really represent a story  
14 book record of achievement for someone who came out of the  
15 fields with her family, had a difficult early life. But through  
16 her commitment for hard work, she has really done an  
17 exceptionally great job, in my opinion.

18 I worked with her and first met her when I got  
19 elected to the Assembly, when she was an officer at Soledad.  
20 And there, working, she's helped a lot of the vocational  
21 programs and academic programs to try to keep people out of  
22 prison once they're released.

23 Of course, being in an institution that handles  
24 Levels III and IV inmates like her present prison does is no  
25 easy task, and certainly is not without controversy.

26 When she left Soledad, she went to San Quentin. From  
27 there, she went to the California Rehabilitation Center at  
28 Norco, then to Pelican Bay State Prison up in Northern



1 California, the Sierra Conservation Center, and finally down at  
2 Centinela State Prison.

3 The last point I want to make, I think her  
4 appointment to this position represented the first woman to be  
5 appointed warden who has come up through the ranks of our  
6 correctional system and not being brought in from the outside.  
7 She's worked her way up to the position that now she aspires to.

8 She's highly qualified. She's tough, but she's  
9 compassionate to the point, willing to try to work on programs  
10 that work. And I just have a great deal of respect for her.

11 I hope the Committee will confirm her to this  
12 position and send it to the Floor with that recommendation.

13 So, I'd like to present now Rosie Garcia, and tell  
14 the Committee how much I respect the work she's done throughout  
15 the State of California.

16 MS. GARCIA: Thank you, Senator.

17 CHAIRMAN LOCKYER: Thank you, Senator Mello. I know  
18 you have other responsibilities. You don't have to stay, but we  
19 appreciate your introduction.

20 Warden, did you want to begin with any opening  
21 comment?

22 MS. GARCIA: Yes, thank you.

23 Senator Lockyer and distinguished panel members, I'm  
24 a 50-year-old divorced Hispanic woman who has raised four  
25 beautiful children. I also have eight grandchildren and one on  
26 the way any day now.

27 I started working in the fields of the Salinas Valley  
28 when I was approximately four years old. Am I sorry? Most



1 definitely not. Why? because way back then, I learned good  
2 work ethics. My father believed in us being the first ones on  
3 the job, before sun-up, and the last ones to leave after sunset.  
4 He also believed that we work the entire time that we were out  
5 there.

6 After leaving home, I married and remained in an  
7 abusive relationship for approximately 13 years. However, at  
8 the age of 32, I was able to leave my husband and be on my own  
9 for the first time in my life. All I had were my four children,  
10 my self-esteem, my peace of mind, and my will to make it. I had  
11 no money and no job and didn't believe in accepting welfare.

12 My children and I suffered some hard times for a  
13 while, but in February of 1977, I was hired by the California  
14 Department of Corrections under the SETA program at the  
15 Correctional and Training Facility at CTF Soledad as an  
16 assistant to an Associate Warden.

17 In June of 1977, I became a correctional officer at  
18 CTF. This was during some of the toughest times in our  
19 Department's history. I was the first woman to work the  
20 security squad at CTF. I was also the first woman to be on the  
21 special emergency response team and was a sniper on that team.  
22 By that time, I was a grandmother.

23 Over the past 17 years with the Department, I have  
24 had the unique opportunity to work at CTF Soledad, San Quentin,  
25 the California Rehabilitation Center in Norco, Pelican Bay State  
26 Prison, Sierra Conservation Center in Jamestown, and now  
27 Centinela State Prison.

28 I have had the good fortune to obtain experience





1 working in classifications of: office assistant, correctional  
2 officer, sergeant, lieutenant, program administrator, associate  
3 warden, chief deputy warden, and now Warden at Centinela State  
4 Prison.

5 I have worked with men and women inmates from one end  
6 of the state to the other, at all levels, ranging from minimum  
7 count to the worst of the worst. My career includes having been  
8 responsible for activating the Security Housing Unit at Pelican  
9 Bay State Prison, which is the most secure unit in the State of  
10 California and the only one of its kind.

11 I would like to close the outline of my  
12 qualifications with this. Normally, a new prison manager is  
13 named in place 14 months before the prison activates. Staff  
14 started arriving 12 months out. As a new prison manager of  
15 Centinela State Prison, I assumed my position six months prior  
16 to the activation, and my staff started arriving approximately  
17 four months prior to the activation of Centinela. The prison  
18 activated on October the 1st, 1993, and now, only 15 months  
19 later, is at 190 percent capacity.

20 Centinela State Prison currently houses Level III and  
21 IV inmates, a U.S. INS Unit, a minimum unit. We have three  
22 vocational programs, sixteen academic programs geared towards  
23 literacy training, a pre-release or GED program, a computer  
24 literacy lab in its first phase, the American Program, and we're  
25 in the process of implementing our self-help groups at this  
26 time.

27 We also have a joint San Diego State University  
28 program for student teachers to intern in the facility in



1 preparation to enter the correctional educational program.

2 How did all this happen? It happened because of the  
3 commitment and dedication of the staff at Centinela State  
4 Prison.

5 Finally, I am the first woman in the history of the  
6 California Department of Corrections to activate a new design,  
7 Level III and Level IV, men's prison in an area that is at least  
8 a two-hour drive to the closest metropolitan area.

9 CHAIRMAN LOCKYER: Thank you very much.

10 I know there are numerous people that wish to speak  
11 in support and at least opposition, perhaps, from a number of  
12 members of CCPOA. My guess is that the list, the one I saw  
13 until this morning was 20 specific examples of concern. I guess  
14 it's expanded since then, but we haven't had quite enough  
15 opportunity to absorb all of that new addendum. That will  
16 probably be the more constructive discussion to help us get  
17 beyond the sort of general nice comments and into real meaty  
18 issues.

19 But I do think it's appropriate that we ask the  
20 support side to come forward initially. I don't know if you've  
21 organized yourselves in terms of who would start off.

22 Senator Beverly, if I could give you the gavel for a  
23 few minutes.

24 SENATOR BEVERLY: All right, sir, you're first.

25 MR. SEARCY: Good afternoon, Mr. Chairman and Senator  
26 Rules Committee Members.

27 My name is Frank R. Searcy. I am the President of  
28 the Chicano Correctional Workers Association.



1 I'm here today in behalf of the Association which  
2 highly supports the confirmation of Ms. Garcia as Warden of  
3 Centinela State Prison.

4 Some of my comments have already been addressed.  
5 Nevertheless, I'm going to ask you to be patient with me while I  
6 make my comments.

7 A few years ago, Ms. Garcia began her correctional  
8 career in the clerical field. Soon after, she made a decision  
9 to enhance her career by going into the custody service of the  
10 Department.

11 Ms. Garcia, in a very rapid and timely manner, took  
12 advantage of promotional opportunities. She has experienced the  
13 entry level of correctional officer, custody supervisor,  
14 managerial level responsibilities. For some of us, that would  
15 have been a satisfying accomplishment, but not for Ms. Garcia.  
16 She has continued on her quest into the administration level.

17 While in other administrative positions, as in her  
18 present position as Warden at Centinela, Ms. Garcia has very  
19 effectively and consistently dispensed her administrative  
20 duties. As any supervisor, manager, or administrator will  
21 attest, at times it is necessary to render decisions that are  
22 not popular to some person or persons. Again, Ms. Garcia has  
23 always shown that careful thought and consideration is a vehicle  
24 used in reaching the appropriate decision.

25 It is obvious, early in her life, Ms. Garcia learned  
26 that to reach a goal, a person has to work hard. Also, a person  
27 has to have a certain amount of commitment and dedication to the  
28 organization. Ms. Garcia has consistently shown those







1 attributes. She has been a role model to many Department of  
2 Corrections employees. Ms. Garcia has been a true asset to the  
3 State of California and the Department of Corrections.

4 In conclusion, the Chicano Correctional Workers  
5 Association strongly requests your individual endorsement for  
6 Ms. Garcia as the Warden of Centinela State Prison.

7 Thank you.

8 SENATOR BEVERLY: Thank you very much.

9 Any questions? Senator Petris.

10 SENATOR PETRIS: I'm very puzzled here. Your group  
11 always appears, or quite often, when the wardens are being  
12 recommended by the Governor for appointment.

13 Your testimony seems to be in direct conflict with  
14 the CCPOA. Are your members also members of the CCPOA?

15 MR. SEARCY: Yes, sir.

16 SENATOR PETRIS: Well, we have a letter here from  
17 them, from their representative, that I think some of the points  
18 here should be answered. I'm sure that the nominee can answer  
19 them, but I'd like to get your comment.

20 Their opposition is based on a long history, not just  
21 one or two assignments. Number one, they say that she's never  
22 earned the confidence of line staff. It's occurred in every  
23 institution where she's operated in upper management capacity.

24 That's a very serious indictment: never earned the  
25 confidence of line staff.

26 Can you comment on that? Is that a blatantly false  
27 statement, or is --

28 MR. SEARCY: I believe it is, because I think that's



1 more of a matter of a personal opinion.

2 I have known of employees or staff that, under her  
3 administration and they have been under her supervision, that  
4 have responded in an appropriate manner to her supervision  
5 managers.

6 SENATOR PETRIS: Well, I don't think we can move it  
7 out on the basis of personal opinion. All the testimony here is  
8 personal opinion based on, you know, your own direct observation  
9 and so forth, as well as the others.

10 All right, the second point is a safe and secure  
11 prison facility is the ultimate responsibility of a warden.  
12 They claim that she's had a pattern of poor judgment.

13 I'm doing this to ask you to comment and also prepare  
14 you for your answer when you testify later, okay?

15 Extremely serious incident in the Security Housing  
16 Unit in September, 1994. A serious fight with weapons broke out  
17 between six Hispanic inmates and one black inmate. A Hispanic  
18 inmate was shot and killed by an officer responding to the  
19 attack. The normal prison policy, they claim, is to have people  
20 cool off and not resume the normal activities for a while, maybe  
21 a day, two days, whatever the period is.

22 This claim is that regular inmate program was resumed  
23 the very next day, which they claim is highly unusual, and then  
24 retaliation. Some Hispanic inmates attacked and slashed the  
25 face of a new officer from the right eye down to the jaw line.  
26 The CCPOA had previously argued against new and inexperienced  
27 officers manning that particular unit.

28 They claim that Ms. Garcia ignored the need to cool



1 down the institution and investigate potentials for retaliation.

2 Do you have any comment on that? Are you familiar  
3 with that incident?

4 MR. SEARCY: No, I'm not, Senator. And really, for  
5 me to respond to any particular incident or situation is, I  
6 think, would be inappropriate because I'm not familiar with that  
7 situation.

8 I think all I can say, really, is that administration  
9 at times will do things that possibly, like I mentioned earlier,  
10 they'll make a decision that is not popular to a certain person  
11 or certain persons. I have seen that many times.

12 However, a line staff member may not have the  
13 information that the administration has. And so, it's very  
14 possible that, based on the information that administration has,  
15 this is why they make and take whatever action that they take.

16 Now, I'd also like to mention, there's going to be  
17 times when you're going to make some decision that may not be  
18 popular with someone. I have seen that throughout my career,  
19 and I have questioned. But then, in the end, again we come back  
20 to the administrator, administration, makes a decision based on  
21 the information that they have.

22 SENATOR PETRIS: I'm not viewing this as a popularity  
23 contest. It is a serious thing. An officer was injured, and  
24 there were other serious problems which they feel could have  
25 been prevented by following the traditional policy.

26 There's another incident relating to north-south  
27 Mexican criminal gangs in which two individuals were stabbed.  
28 Ms. Garcia would not permit more than a cursory one-hour search







1 for weapons in areas that included housing units and an entire  
2 yard. Even the watch lieutenant had requested a much more  
3 extensive search but was denied. The inmate programs resumed  
4 immediately.

5 From your knowledge of prison policy, assuming these  
6 statements are true, should there be a more extensive search or  
7 not?

8 MR. SEARCY: Again, Senator, it's really difficult  
9 to, without having the information, shall we say, of being there  
10 and having that person in there and witnessing that situation,  
11 it's really difficult at this point to be able to say that  
12 whatever action was taken was appropriate or inappropriate.

13 SENATOR PETRIS: Since this involved Hispanic  
14 persons, I would think that it would come to your attention as  
15 an officer of your organization. I guess it hasn't.

16 MR. SEARCY: Not necessarily, Senator.

17 SENATOR PETRIS: Well --

18 MS. GARCIA: May I respond to that?

19 SENATOR PETRIS: Yes, I'm going to ask you also.

20 I just assume when you come in to testify, you have  
21 a pretty good knowledge of the person's record and events that  
22 happen.

23 You know, in a court of law, the questioning is a  
24 little different. I mean, if you came into court and testified  
25 that she was an excellent driver, and I'm asking you, "Are you  
26 sure she's an excellent driver?"

27 "Oh, yeah. I've been in the car with her several  
28 times. She's a very good driver."



1 "Well, would you have the same opinion if I informed  
2 you that, according to police records, she has run red lights  
3 and clobbered people in the middle of the intersection without  
4 regard to their safety on three separate occasions? Now, do you  
5 still think she's an excellent driver?"

6 Your answer would probably have to be, "Well, I  
7 didn't know that stuff. The answer obviously is no, that's not  
8 the act of an excellent driver."

9 So now I'm giving you facts reported by other  
10 employees that have not come to your attention, and I'm asking:  
11 that doesn't change your opinion at all? Because of the  
12 circumstances that you described, it depends on what information  
13 the administration receives.

14 MR. SEARCY: Senator, an administrator has to make  
15 certain decisions. And at times, again, they may be unpopular,  
16 but that administrator's going to make those decisions.

17 Now, yes, I may not be privilege to some amount of  
18 information. However, also something that can be considered and  
19 looked at, if she would have had a lack of knowledge to properly  
20 dispense with administrative duties, I think her career would  
21 have stopped then or a long time ago. I don't see how the  
22 administration of the Department would have allowed her to  
23 continue, and even up to this point, to advance to this point of  
24 warden at a prison, and not only a warden at a prison, but a  
25 warden to open up a prison, which is a little bit different than  
26 to go into a prison that's already established. Because, a  
27 prison that is being opened, that is like a fish bowl, and  
28 you're on the inside. So, that warden's on the inside.



1           And the moment that warden breathes a little bit  
2 different, oh, oh, look what the warden is doing. It's a fish  
3 bowl. It's a little bit different than an already established  
4 institution.

5           SENATOR PETRIS: I guess you're saying it's a lot  
6 more difficult.

7           MR. SEARCY: Extremely.

8           And yet, she has been able to withstand the problems.  
9 She's dealt with them. I don't know of any warden opening up a  
10 new prison is not going to encounter likewise problems.

11          SENATOR PETRIS: Thank you.

12          Mr. Chairman, at the proper time, I'd like to have  
13 Ms. Garcia respond to these so I don't have to repeat them.

14          SENATOR BEVERLY: Maybe it would be most appropriate  
15 now, while the issue's before us.

16          SENATOR PETRIS: Thank you.

17          Would you like to comment on the points that I  
18 raised that are out of this letter?

19          MS. GARCIA: Yes, but you'll have to refresh my  
20 memory a little bit.

21          SENATOR PETRIS: I'll have to refresh mine, too.  
22 Let's take a look.

23          SENATOR BEVERLY: Have you seen this letter?

24          MS. GARCIA: Yes, I have.

25          SENATOR PETRIS: The first one is that you've never  
26 -- the allegation. I'm not alleging this.

27          MS. GARCIA: Right.

28          SENATOR PETRIS: The allegation is that you've never





1 earned the confidence of the line staff, and that's been true at  
2 every level in the institution where you've advanced.

3 That does seem to contradict the very notion of  
4 advancement; doesn't it? But anyway, this has occurred in each  
5 institution where you have operated in an upper management  
6 capacity.

7 Can you answer that?

8 MS. GARCIA: Yes, I don't believe that to be true.

9 I do have a lot of supporters. I have instilled  
10 leadership in a lot of staff in all institutions at all levels.

11 And just like Mr. Searcy said, I don't believe that I  
12 would have gotten this far had I not been a fair manager and  
13 instilled some support from the staff. I have never known there  
14 to be a lack of confidence.

15 SENATOR PETRIS: Have you had problems over the years  
16 with this particular organization? Have they been meeting with  
17 you to complain about your style of operation?

18 MS. GARCIA: They have met with me. My first  
19 encounter of any of this type of negative was at Sierra  
20 Conservation Center. Prior to that I had none.

21 SENATOR PETRIS: When were you at Sierra?

22 MS. GARCIA: I was at Sierra between 1991 and I  
23 believe it was March of '93.

24 SENATOR PETRIS: Can you refer back to September of  
25 last year on this fight that broke out where one inmate was  
26 killed? A specific complaint there is that you didn't arrange  
27 for enough cooling off period, but had the normal activities of  
28 the prison continue as if nothing had happened.



1 MS. GARCIA: Yes, that was at the Administrative  
2 Segregation Unit. The Administrative Segregation Unit, the only  
3 program that we have there is yard. The shooting of that inmate  
4 and the death of that inmate happened -- occurred in that yard.

5 There were no yards put out as a result of that  
6 incident after that for a while.

7 The slashing occurred on the next day, when an inmate  
8 was being showered. The showering occurs one inmate at a time.  
9 It's not like you have a lot of inmates out of the tier,  
10 programming or whatever. It's a restricted housing unit where  
11 one inmate is taken from a cell and taken to the shower area by  
12 two officers. And we also have a control booth officer with  
13 weapons observing this movement of this inmate.

14 The inmate was in the shower. The officer was new.  
15 He was called to the shower area by the inmate and asked, I  
16 believe, to pick up something, or brought his attention to the  
17 ground floor. And as he bent over, he was slashed by the  
18 inmate.

19 SENATOR PETRIS: Was he the one that was involved in  
20 the prior incident?

21 MS. GARCIA: No.

22 SENATOR PETRIS: Another point they described is  
23 about a defect in the prison cell doors in a maximum security  
24 area. It went ignored for months. I guess maybe there wasn't  
25 enough money to fix it. They wanted you to retrofit the doors  
26 according to CDC policy, and that was delayed, rejected and  
27 delayed for a long time, but in the meantime, the landscape  
28 projects were approved in front of the administration building.



1           So, the claim is, it's a terrible disparity that  
2 damages the morale and feeling of safety of the officers when  
3 they see money spent on landscaping but not on improving their  
4 safety on the doors.

5           Do you remember that?

6           MS. GARCIA: Yes, I do.

7           The money that's spent on landscaping is money that  
8 is just for the landscaping of the prison. It's agency retained  
9 funds. When the prison is funded, so many funds go to the  
10 landscaping.

11           I did put out a letter to all staff, and I also had  
12 it published in the in-service training calendar that all staff  
13 get on a monthly basis, explaining the landscaping of the  
14 institution and where the funds were coming from. I cannot  
15 utilize those funds for salaries or wages, or equipment, or  
16 anything else other than landscaping. And that was related to  
17 the union.

18           SENATOR PETRIS: They complained to you personally  
19 about that?

20           MS. GARCIA: Yes, they came and asked me about it.

21           SENATOR PETRIS: And did you explain it? I imagine  
22 they should have known that anyway, about the budget stuff.  
23 They usually watch the budget pretty closely. That's why they  
24 get such good pay compared to everybody else in law enforcement.

25           So, I imagine you reminded them that you don't have  
26 control over that, and yet they put it in the letter. They're  
27 blaming you for it.

28           Do you think that's an unfair charge?





1 MS. GARCIA: Yes, sir.

2 SENATOR PETRIS: Blaming you for spending money on  
3 landscaping and not retrofitting the doors.

4 MS. GARCIA: I feel it's unfair and that I have no  
5 control over that money.

6 SENATOR PETRIS: How about the money for the doors?

7 MS. GARCIA: I don't have the money for the doors,  
8 sir.

9 SENATOR PETRIS: Well, I think all the correctional  
10 officers are going to have to vote for a tax increase, just like  
11 I said for the educator a while ago.

12 [Laughter.]

13 SENATOR PETRIS: Well, there's some more things, but  
14 I've taken enough time. Thank you, Mr. Chairman.

15 SENATOR BEVERLY: Senator Lewis for a question.

16 SENATOR LEWIS: Mr. Searcy, could you tell me how  
17 many members there are in the Chicano Correctional Workers  
18 Association.

19 MR. SEARCY: Two thousand, approximately, and maybe  
20 one or two hundred more. It runs about two thousand.

21 SENATOR LEWIS: How many members, what percentage of  
22 the workforce would you say are Hispanic at the Centinela State  
23 Prison?

24 MR. SEARCY: At Centinela State Prison, I think we  
25 have about -- just about 80 or 90 members.

26 SENATOR LEWIS: Is there 100 percent overlapping  
27 membership between your membership and membership in the CCPOA?

28 MR. SEARCY: It probably would be. It most likely



1 is. Everybody is a member of CCPOA also.

2 Let me clarify something. When you asked me about  
3 the membership at Centinela, those members are not necessarily  
4 all Hispanic. They may be some of other ethnics also.

5 SENATOR LEWIS: Do you know how large your Imperial  
6 Chapter is?

7 MR. SEARCY: Approximately 90.

8 SENATOR LEWIS: And in your letter, you claim that  
9 there's unanimous support for Warden Garcia?

10 MR. SEARCY: Yes, sir.

11 SENATOR LEWIS: Warden Garcia, I'm relatively new to  
12 this Committee, but I've been told that it's a fairly rare  
13 occurrence that the CCPOA opposes a warden in a confirmation  
14 process.

15 I'm curious. We've been given this list of 20  
16 complaints that they have. I've had a chance to look at those.  
17 I've had a chance to look at your responses.

18 But I'm curious. Is there some reason that you can  
19 point to that you believe that CCPOA is so vigorously opposing  
20 your nomination?

21 MS. GARCIA: I wish I could, sir. I don't know. If  
22 I could, I would like to remedy it, but I have no idea.

23 MR. SEARCY: Senator, if I may make a comment on  
24 that, as the other Committee Members, I think, can inform you,  
25 there's been other wardens that have been in these hearings for  
26 confirmation, and CCPOA also has opposed. And it's just a  
27 coincidence that they have been Hispanic also.

28 SENATOR BEVERLY: Any further questions?



1           SENATOR LEWIS: That's all I have.

2           SENATOR BEVERLY: Next witness, please.

3           MR. SEARCY: One more, Senator Beverly, if I may.

4           Senator Petris and the rest of the Committee Members,  
5 I want to go back and address a little bit the issue of the  
6 staff, the staff under her administration, and having good  
7 contact with her.

8           Let me give you about a one-second history of our  
9 Association; not the history, but the make-up of it.

10           Membership is open to any employee in the Department  
11 of Corrections, to any employee of the State of California, to  
12 any citizen who wishes to help us pursue our goals and mission.  
13 In that, we also have administration that is part of our  
14 membership.

15           Ms. Garcia, when she went to Pelican Bay, we did not  
16 have a chapter established there. The information at that time  
17 was, a chapter was established eventually, but the point was --  
18 is that Ms. Garcia was very, very instrumental in helping in  
19 that chapter being established.

20           Now, my question would be to someone, if she is  
21 lacking in some kind of communication, if she is lacking to some  
22 contact with her staff, then how was that chapter able to be  
23 formed?

24           Thank you, gentlemen.

25           SENATOR BEVERLY: Thank you very much.

26           Next witness.

27           MS. LOPEZ: Good afternoon. I'm Helen Lopez. I  
28 live in El Centro, California. I'm the CEO of a community-based





1 organization there who serves people with disabilities and over  
2 the age of 55.

3 I'm the Chairman of the Centinela Citizens Advisory  
4 Committee. I'm a wife and mother of two. I'm a Board of  
5 Supervisors nominate to the CAC.

6 I've had the pleasure of knowing Rosie, Mrs. Garcia,  
7 in many of the roles that she's served in for the past year.  
8 I've seen her in action at her facility. I've watched her in  
9 her administrative capacity as she orchestrates her management  
10 team at the CAC and in other venues. I've heard her speak about  
11 her inmates and observed as she responds to her community.

12 She's without question performed in all of these  
13 capacities with dignity, outstanding professionalism, and an  
14 uncanny knack for bringing any issue, no matter how  
15 inflammatory, into perspective.

16 She is spoken of by my fellow citizens who work for  
17 her as a supporter and a fair boss, and by her community's  
18 leaders as visible, supportive, and active in her community.

19 But there's a lot more to Rosie than these laudable  
20 attributes, for she has achieved something that is rare in  
21 Imperial County. She has been embraced and enfolded by our  
22 community, and we consider her our own.

23 For those of you who have declined the pleasure of  
24 visiting the other end of your state, let me tell you a little  
25 bit about Imperial County. It is somewhat a county of a  
26 different color, to say the least. Many folks up here think  
27 that it's part of Arizona, part of Mexico, part of who knows  
28 where. Many people down there consider it a sovereign nation.



1           It's a community that historically has not always  
2 been served with understanding and sensitivity in the state's  
3 bigger picture. And as such, has developed a sense of suspicion  
4 for outsiders.

5           For Rosie to have been embraced as she has is nothing  
6 short of miraculous, and to have done it in the span of less  
7 than a year is tribute to her integrity, her determination and  
8 her professionalism.

9           On behalf of Imperial County Board of Supervisors,  
10 the citizenship of Imperial County, I urge your confirmation of  
11 Rosie Garcia. Her place in Imperial County would be impossible  
12 to replace.

13           In the interest of time, I know there's a lot of  
14 speakers out there, let me just recognize a few and perhaps we  
15 can save a little time here. There are many people here from  
16 Imperial County that have come to support Mrs. Garcia. If I  
17 could just mention their names and have them stand briefly.

18           Bill Condit, the Chairman of the IID Board of  
19 Directors. Carolyn Blankenship from I.V. Home Health. Other  
20 members of my Citizens Advisory Committee. Grace Cessna, who's  
21 also the President of Mana. Gilda McFadden and Ed McGrew.

22           I also have a letter from the San Diego Blood Bank  
23 and from Mana, which is a national Latina women's organization  
24 from the local chapter, and I'll just read brief vignettes from  
25 those.

26           From Mana:

27           "Since her arrival, Mrs. Garcia has  
28 worked tirelessly for the benefit of her



1 community. She is a role model and an  
2 inspiration to Latinas in the Imperial  
3 Valley.

4 "In April, 1994, she was named Dama  
5 de Distincion ..."

6 which, for those of you who are not bilingual, is "Woman of  
7 Distinction"

8 "by the chapter in Imperial County in  
9 recognition of her leadership abilities  
10 and impressive work ethics."

11 And from the Blood Bank:

12 "I had the pleasure of becoming  
13 acquainted with Mrs. Garcia early on in  
14 her tenure when I approached her about  
15 holding a blood drive for prison  
16 employees. She responded enthusiastically  
17 and without hesitation. Since that time,  
18 we've had several drives at Centinela, and  
19 not only is she the first in line to give,  
20 but she encourages her staff to do  
21 likewise."

22 I appreciate the brief time you've given me here  
23 today. I have a gentleman behind me, my son, who'd like to say  
24 just a word or two.

25 Pay attention to that face. You may see it again in  
26 the future sometime.

27 SENATOR BEVERLY: Proceed, please.

28 MR. SNYDER: Hello. My name is Morgan Snyder, and





1 I'm a representative for the graduating 8th grade class of Simi  
2 Elementary School.

3 My school is very close to the Centinela Prison in  
4 which Ms. Garcia is Warden. Ms. Garcia has allowed the prison  
5 to be built and to operate near my school without causing any  
6 problems. They have installed an escape alarm in our fire  
7 station.

8 She has agreed to have her employees association help  
9 us raise money for our class trip. She always listens to what  
10 the citizens have to say, and we are extremely grateful for all  
11 she has done and will do for our class.

12 We think that Ms. Rosie Garcia has done a good job,  
13 and she should continue to be the Warden there.

14 Ms. Garcia, thank you.

15 SENATOR BEVERLY: Thank you very much.

16 Who wants to follow that one?

17 [Laughter.]

18 MR. BRISTER: Honorable Senators, my name is Gene  
19 Brister. I come here from the City of El Centro as the Mayor of  
20 that city.

21 And I echo a lot of the things that Helen said. We  
22 do get accused of being a member of a different state. And of  
23 course, down there sometimes some of our citizens feel that  
24 we're a sovereign nation.

25 But I remember when we, as citizens, when I was first  
26 active with the Chamber of Commerce, and we worked hard to bring  
27 the prison system into our community because we saw the economic  
28 value and the good citizenry that we had heard of in other parts



1 of the state.

2 So, I made the trip from El Centro to Sacramento  
3 today to tell you that I've spoken with my other constituents on  
4 the Council, and they agree that a good citizen is an  
5 understatement of what Rosie Garcia has demonstrated as the  
6 Warden over the last year in our community. She has been at  
7 more events than I can begin to imagine to repeat back to you.  
8 And certainly, that is an indication of a person that is  
9 interested in their community. It is no wonder that, as Helen  
10 Lopez says, and she says that with conviction, because it is not  
11 a community that will embrace you if you have a stand-off  
12 attitude. And certainly, she embraced the community, and the  
13 community has embraced her.

14 I have ran into her on numerous occasions. She is  
15 there for the community. She wants to be a part of the  
16 community. She is a part of the community in all aspects.

17 I have also had the opportunity on many occasions,  
18 unbeknownst to Mrs. Garcia, certainly, to talk with people that  
19 have worked under her leadership. I am here to tell you only  
20 good things about Rosie, because I have not heard one bad thing  
21 about her until I came in these chambers today.

22 So, I strongly urge you, and I will not belabor my  
23 message any longer, to confirm Rosie Garcia as the Warden of the  
24 Centinela Prison.

25 Thank you very much.

26 SENATOR BEVERLY: Thank you, Mayor. Any questions?

27 Next witness.

28 MR. MABRY: Good afternoon. I'm Roy Mabry. I'm the



1 State President for the California Association of Black  
2 Correctional Workers.

3 I'm here today on behalf of the Association to give  
4 100 percent support for confirmation of Rosie Garcia, Warden of  
5 Centinela State Prison.

6 My comments, my general comments, would be similar to  
7 those that you've heard from everybody, and probably what you'll  
8 hear later on, so with that, I'll just entertain whatever  
9 questions you might have.

10 SENATOR BEVERLY: Any questions?

11 Yours is the group represented by Leon Ralph?

12 MR. MABRY: Leon Ralph is our former lobbyist, yes.

13 SENATOR BEVERLY: Former?

14 MR. MABRY: Yes.

15 SENATOR BEVERLY: Thank you.

16 Senator Lewis.

17 SENATOR LEWIS: I want to ask you the same question I  
18 asked Mr. Searcy.

19 What's the membership of your Association?

20 MR. MABRY: We're somewhere between three and five  
21 thousand.

22 SENATOR LEWIS: And there's overlapping membership  
23 between your organization and CCPOA?

24 MR. MABRY: Basically every member of the Association  
25 of Black Correctional Workers is a member of CCPOA, along with  
26 myself.

27 Also, I'm a representative of the Supervisors for  
28 CCPOA.





1           SENATOR LEWIS: Thank you, sir.

2           MR. MABRY: You're welcome.

3           SENATOR BEVERLY: Next witness.

4           MR. LEWIS: Good afternoon. My name is Lindon Lewis,  
5 and I'm a little bit nervous.

6           I began my career in November, 1981 at San Quentin  
7 State Prison, and at that time worked for and with Correctional  
8 Lieutenant Rosie B. Garcia.

9           I've known her and have worked with her at three  
10 different institutions: San Quentin, Sierra Conservation  
11 Center, and Centinela State Prison.

12           I kind of jumped my turn where I've been signed up  
13 because you'd addressed a couple things that I felt I could  
14 definitely shed some light on. One of those was that there was  
15 no support from the rank and file.

16           I've been with the Department, working on my 13th  
17 year, and other than one year of that time have always been rank  
18 and file. And to my knowledge, and to the knowledge of many of  
19 the people that I've worked with, she is supported.

20           We've worked in some very, very difficult times. The  
21 Department's changed drastically in the last ten years. And  
22 there's been full support by the people that I've worked with,  
23 but I work with a unique bunch. I'm one of the positive  
24 employees. I try to hold my head high. I'm proud to work in  
25 this department, and am real proud of many of the co-workers  
26 that I work with.

27           It's a very difficult job until you become  
28 experienced and trained and comfortable in this setting, working



1 in a correctional institution. And it's a real unusual  
2 occupation, too. I don't think a lot of people probably  
3 consider staying in it when they first start. A lot of people,  
4 it's a stepping stone into law enforcement, other careers and  
5 stuff.

6 But those of us that find we have a love for it and  
7 stay find it very rewarding once you fully understand what's  
8 going on.

9 I worked for Ms. Garcia when she was Correctional  
10 Lieutenant. I've worked for her when she was the Chief Deputy  
11 Warden, and I've worked for her when she was an Acting Warden,  
12 and I've worked for her as the Warden at Centinela State Prison.

13 I've also had the opportunity to work with her at  
14 Sierra Conservation Center as a board member of the local union  
15 chapter. I also was elected to Vice President at Sierra  
16 Conservation Center, and worked for a short time in that  
17 capacity, a very short time, prior to transferring out to fire  
18 camp.

19 Each of the people that are involved with the union  
20 join the union and participate for a lot of different reasons.  
21 Some people have an axe to grind. Some people are disgruntled,  
22 and then some people want change.

23 I hope that I joined for the reasons of change. I  
24 had worked with Ms. Garcia in the past, and I knew that that  
25 opportunity was there.

26 Many issues come up in the daily operations of an  
27 institution, but there needs to be an understanding that you  
28 cannot please everyone. A correctional setting is a tough,



1 tough operation to run.

2 And as I said, I remained rank and file through many,  
3 many years and many supervisors. And by far, this is the most  
4 approachable and concerned and personable supervisor manager  
5 that I've ever worked with.

6 I got away from my prepared text, and that's probably  
7 good because it's lengthy.

8 One other thing that I think I could shed some light  
9 on is some of the incidents. I was the security squad sergeant  
10 for the first year the prison opened. So, I worked under many  
11 of those emergencies that you described -- discussed, sir. I  
12 was probably the lowest ranking member in the room, and blended  
13 in with the flies on the wall during these decision making  
14 times, but I was there, privy to the process and the concern  
15 that went on.

16 I can remember one instance that wasn't mentioned,  
17 just where there was a rumor that we felt was valid that a  
18 correctional officer was to be assaulted in a stabbing assault.  
19 Ms. Garcia held -- and I would be guesstimating the amount of  
20 hours of interviews -- but assigned her correctional staff and  
21 her support staff to probably 16 hours of interview, until every  
22 inmate on that yard had been interviewed, until all of that  
23 information had been analyzed and reviewed, and then made her  
24 decision on how we would respond to that possible threat.

25 But it's a double-edged sword when you stop a program  
26 at an institution. For those people that are not involved in  
27 the emergency, what little program there is, you're taking away  
28 from them. So, it's a major concern to return your prison







1 setting back to normal operation as soon as possible.

2 The care and concern that goes out, and I've been  
3 behind those closed doors numerous times, is there. She truly  
4 cares about us.

5 I came up here as a private individual today. I'm  
6 not the president of an association; I'm not -- I'm also a  
7 member of CCPOA.

8 But I'm here to tell you that I've been there. I've  
9 worked closely with her for many years, through her career, and  
10 I have 100 percent confidence. And I'd never take the time to  
11 come forward or to speak on anyone's behalf.

12 I truly know she'll do a good job and has done a good  
13 job. And many, many of us support her fully.

14 Thank you.

15 SENATOR BEVERLY: Thank you.

16 Senator Petris.

17 SENATOR PETRIS: In summary, I gather that their  
18 number one statement of opposition, total lack of confidence by  
19 personnel over the years, you vigorously disagree with that  
20 statement?

21 MR. LEWIS: Seriously disagree, and I've been there.

22 SENATOR PETRIS: Thank you.

23 SENATOR BEVERLY: Any further questions? Senator  
24 Ayala.

25 SENATOR AYALA: What is your current rank or rating?

26 MR. LEWIS: I'm a parole agent in San Diego.

27 SENATOR AYALA: You're no longer with the Department?

28 MR. LEWIS: Yes, sir. It's a division of -- Paroles



1 is a division of the Department.

2 SENATOR AYALA: You're a member of CCPOA?

3 MR. LEWIS: Yes, sir, I am, rank and file member.

4 SENATOR AYALA: Thank you.

5 SENATOR BEVERLY: Next witness.

6 MR. GRAN: Thank you Committee Members. My name is  
7 Mark Gran. I'm the Mayor of the City of Imperial, which is down  
8 in the Imperial Valley, right next to the City of El Centro.

9 I don't know how many times you have two mayors from  
10 two towns that are affected by a prison come up to support a  
11 confirmation of a warden, but my staff, my police department,  
12 the full Council, and the citizens of our community are very  
13 much in support of confirming Rosie Garcia for this position.

14 I had a speech, but I'm not going to bring that up  
15 because we're short on time.

16 But one thing you need to look at as far as the staff  
17 is concerned, I had the pleasure of riding up here. Many of my  
18 colleagues, and I'm not as eloquent as they are, but many of our  
19 colleagues flew up here. I had the pleasure to drive up with  
20 six staff members of hers in a van and stayed with them last  
21 night. It was very much a learning experience.

22 And for CCPOA to say that the staff does not have  
23 confidence in her is not true. As far as the staff that I have  
24 met -- and I'm a realtor down in the area, and I sell a lot of  
25 houses to CCPOA members -- and there has not been one in the  
26 time that I've sold these houses that has ever complained about  
27 Rosie.

28 She has the full confidence of our Council as she's



1 been a part of our community. Like everybody has alluded to,  
2 our area is very close knit. I've lived on and off down there  
3 for 25 years, and nobody gets in without showing a sincere  
4 effort to be part of the community. And she is part of our  
5 community, and we want her to stay there.

6 Another thing, you look out in the audience; 70  
7 percent of the people that are here are staff members of  
8 Rosie's. They took their own time, their own effort, their own  
9 money, to come up here to support her. That doesn't show me  
10 that staff is against her.

11 I hope you will confirm her as the Warden. Thank  
12 you.

13 SENATOR BEVERLY: Thank you.

14 Any questions?

15 Next witness.

16 MS. PEREZ: Good afternoon. My name is Anita Perez.  
17 I am representing the San Quentin Chapter of CCWA.

18 Thank you very much for allowing me to speak on  
19 behalf of Rosie Garcia. I have known Rosie for over ten years.  
20 It has been during this time that I have observed her decisive  
21 decision making skills and exceptional leadership qualities that  
22 contribute to the professional integrity of the California  
23 Department of Corrections.

24 I had the opportunity to work under the direction of  
25 Rosie Garcia. I am the line staff, and the line staff that I  
26 know fully support her and respect her in every aspect of her  
27 administrative abilities. She was my lieutenant.

28 I had the opportunity to work with Rosie on





1 affirmative action issues, in which her leadership and expertise  
2 provided a plan of action to improve those areas of concern.  
3 Her ability to work with concerned groups and address the issues  
4 impartially has encouraged favorable results.

5 As a female working in the Department of Corrections,  
6 I appreciate Ms. Rosie Garcia in supporting women in  
7 corrections, and setting a positive example for the women in  
8 corrections. Ms. Garcia has afforded women the opportunity of  
9 training, development, and has prepared us for leadership  
10 responsibilities while creating the distinct precedent of an  
11 example for others to follow in the workforce throughout the  
12 Department of Corrections.

13 There are those in this room, there are those maybe  
14 in other prisons, who disagree with the aforementioned.  
15 However, as with all conscientious leaders, there are an element  
16 of adversity which seem necessary preparation for great duties.  
17 I believe the personal indifference to the issues have clouded  
18 the reasoning and the real issues.

19 Is Rosie Garcia an able administrator? Yes. Does  
20 she have the support of those on the line staff? Yes. Does she  
21 have the support of all the women in the Department of  
22 Corrections? I represent CCWA, and as a woman I say yes.

23 She is supported by CCWA and is additionally  
24 supported vastly by the San Quentin Chapter.

25 Those with special interests fail to distinguish  
26 essential matters from irrelevant and incidental ones. They  
27 intend to paint an untrue picture of Ms. Garcia's administrative  
28 ability in an effort to discredit her in the minds of this



1 Committee and the women in the Department.

2 I have seen Ms. Garcia's long-standing support of  
3 women. I have also seen Ms. Garcia's awareness of and  
4 sensitivity to all ethnic groups.

5 Therefore, those in this room who attempt to  
6 discredit Ms. Garcia here at this hearing I believe do so out of  
7 personal vindictive reasons. They do not support, nor do they  
8 represent, the women in the Department. It is apparent that  
9 adversity seems to be a necessary preparation for great duties.

10 I encourage each of you on this Committee to look at  
11 the performance and personal integrity of Ms. Rosie Garcia.  
12 Thank you.

13 SENATOR BEVERLY: Thank you.

14 Any questions?

15 Next witness.

16 MR. CASTILLO: Good afternoon, Mr. Chairman and  
17 Committee Members. My name is Ray Castillo. I'm the Community  
18 Resource Manager for Centinela State Prison.

19 I've been with the Department of Corrections  
20 eight-and-a-half years. I first met Ms. Garcia in '93, in March  
21 of '93, when she was assigned manager.

22 As her Community Resource Manager, and on behalf of  
23 CCWA, Imperial Chapter, which I also happen to be President of,  
24 we wholeheartedly support Ms. Garcia's confirmation as Warden.

25 Ms. Garcia has been in Imperial County 22 months, and  
26 during that time has involved herself in many of the community  
27 affairs as well as community service organizations. Ms. Garcia  
28 has been an excellent example for promoting positive community



1 relationships. As a result, and as you've heard today in  
2 testimony, she has earned a great deal of respect from the  
3 community.

4 Ms. Garcia has proven to be a very capable warden,  
5 demonstrating sincerity, conviction, and effective and genuine  
6 concern for the safety and security of her staff at the  
7 institution. With Ms. Garcia's directions, Centinela State  
8 Prison has achieved a balanced workforce of qualified men, women  
9 and minorities. A recent peer audit gave her a very good  
10 rating.

11 Ms. Garcia has nurtured Centinela State Prison,  
12 spending long hours for its successful activation.

13 And one of the comments, if I could just comment.  
14 About a year ago, I heard her Chief Deputy mention that  
15 Centinela State Prison, of all the prisons that have ever  
16 activated, probably had some of the least or fewest numbers of  
17 incidents. I don't know what the statistics are, but that was  
18 just a comment.

19 I'd like to acknowledge, and for the sake of -- I  
20 realize we're running short of time, I'd like to acknowledge  
21 some chapter presidents that are here in this chamber today:  
22 James Natividad, Chuckawalla Valley State Chapter representing  
23 Chuckawalla State Chapter; also Mr. Dillon McFadden from the  
24 Urban League and on behalf of the Optimists Club is here in  
25 support.

26 That's all I have to say. Thank you very much,  
27 gentlemen.

28 SENATOR BEVERLY: Thank you.







1 Any questions? Senator Lewis.

2 SENATOR LEWIS: I'm sorry, I couldn't quite hear your  
3 introduction. Did you say you were Chapter President of what?

4 MR. CASTILLO: CCWA, the Chicano Correctional Workers  
5 Association, Imperial Chapter.

6 SENATOR BEVERLY: Thank you very much.

7 Next witness, Mr. Gomez.

8 MR. GOMEZ: I want to take two minutes, Senator,  
9 because I think it's important.

10 First, I'd like to say, Rosie still enjoys the full  
11 confidence of the administration to perform the duties at  
12 Centinela State Prison.

13 SENATOR BEVERLY: Do you want to identify yourself  
14 for the record?

15 MR. GOMEZ: Jim Gomez, Director of Corrections.

16 I also want to ensure that Members understand that  
17 these are difficult jobs. Being a warden of a 4,000 inmate  
18 prison, with the judgments and decisions that you have to make  
19 on a daily basis, are difficult decisions. And all of us in  
20 this profession understand that those decisions can be second,  
21 and third, and fourth guessed on occasion. And sometimes when  
22 we make decisions and look back on them, we wish we had had  
23 better information when we made them.

24 I can tell you, Rosie's done a good job there. This  
25 is not an issue today of a Hispanic woman, and I want to make  
26 sure that's clear for the record. This is an issue of Rosie  
27 Garcia.

28 The CCPOA has been an equal opportunity opposer.



1 They have opposed white males; they've opposed Hispanic females;  
2 they've opposed blacks. And I think I would like to get that  
3 out, that's not what this is about.

4 There's a judgment issue here, and there are members  
5 of the CCPOA who believe -- and Rosie didn't say it, and her and  
6 I have talked about it many times -- that she's too program  
7 oriented. That she tries to ensure that balance between staff  
8 and inmates. And it's a difficult balance that, when you run an  
9 institution, of how soon do you unlock, and lock, and let things  
10 get back to normal.

11 And that's what 80 percent of what you're going to  
12 hear is really about today, is that kind of judgment.

13 We monitor that judgment from Central Office, and she  
14 uses good judgment. There are difficult decisions, and many  
15 times it revolves around the information that you have available  
16 to you.

17 I want to ensure for this Committee that you  
18 understand that we look at each and every one of those major  
19 incidents that occurred that you penetrated so well on, Senator  
20 Petris, in terms of what does that mean to the staff, and are we  
21 letting that place go too loose. We monitor that from Central  
22 Office. We talk on a daily and hourly basis.

23 So, I just want to reconfirm to this Committee that  
24 we believe Rosie Garcia is the right person for that job today,  
25 and she's doing a good job down at Centinela. But it's a  
26 difficult job. It's going to have problems with unions, and  
27 it's going to have problems because any time you have 4,000  
28 inmates and a thousand employees, you're going to piss some



1 people off on occasion.

2 Thank you very much.

3 SENATOR BEVERLY: I assume that concludes the support  
4 testimony. We'll hear from the opposition.

5 MR. CONDIT: My name is Bill Condit.

6 SENATOR BEVERLY: You're testifying in support?

7 MR. CONDIT: Yes, certainly.

8 My name's Bill Condit. I'm the President of the  
9 Board of Directors of the Imperial Irrigation District. I'm a  
10 past City Councilman for the City of El Centro, and past Mayor  
11 of the City of El Centro.

12 I'm going to be brief. I have prepared a letter in  
13 support of the confirmation of Rosie Garcia I would like to  
14 submit.

15 I just want to say offhand that I'm in a service club  
16 with Rosie, the Optimists Club, and I serve on the board of the  
17 Urban League with Rosie. And from what I've seen, she's  
18 definitely a top notch administrator.

19 SENATOR BEVERLY: Thank you very much. Your letter  
20 will be made part of the record.

21 I assume that does conclude the support testimony.  
22 We'll now hear from the opposition.

23 MR. NOVEY: Deputy Chairman Beverly, I guess is the  
24 appropriate title right now, and Senators, I'm Don Novey, State  
25 President --

26 SENATOR BEVERLY: Imperial Russia. Vice Chairman.

27 MR. NOVEY: Vice Chairman -- of the California  
28 Correctional Peace Officers Association, representing 23,000 men





1 and women working the Youth and Adult Corrections Agency; 40  
2 percent of our membership is minority; 40 percent of our  
3 democratically elected membership at the executive level are  
4 minority.

5 We are here today, unfortunately, to oppose Ms.  
6 Garcia for confirmation as Warden in our prison system.

7 Senators, CCPOA has historically requested this body  
8 to pay close attention to our profession of corrections, and  
9 even Senator Petris, in reference to our salary, which I can  
10 appreciate.

11 Presently, we are severely overcrowded with minimal  
12 projections of 250 percent inmate population by the end of this  
13 millennium. Also, there's a 19,000 bed emergency package on the  
14 Governor's desk today that, in essence, states that we've got to  
15 crowd existing facilities like rubber bands. Those granite  
16 walls and those fences can't move any further, but I guess we're  
17 going to be stuck with a difficult task because of "Three  
18 Strikes You're Out."

19 As has been stated in the past, and directly to the  
20 Chair of this Committee, we are willing and waiting to handle  
21 all serious and violent offenders under "Three Strikes." In  
22 addition, we are open to alternatives for nonviolent offenders,  
23 that other people might not have an openness to, but we do.

24 But we cannot have managers at the highest level,  
25 quoting Senator Bill Lockyer, transmogrifying facilities and  
26 unending antroopathy [sic] towards line peace officers.

27 I would like to take a statement of personal note  
28 before our Executive Vice President speaks.



1           The last three institutions Ms. Garcia has served at,  
2 all three chapters have not supported her. Forty percent of  
3 those boards, democratically elected by the employees, are  
4 minority.

5           In addition to that, at Sierra, all unions opposed  
6 Ms. Garcia. All unions. And Mr. Henning also, representing the  
7 California Labor Federation, opposes Ms. Garcia.

8           It's not a CCPOA problem. It's a problem of  
9 management.

10           I've been in the system; this is my 25th year, and  
11 I've been on some rocky roads and some things we can't even talk  
12 about on those rocky roads presently. There're some difficult  
13 things going on at Pelican Bay that, I think, are being handled  
14 in the federal court, and I think Jeff will allude to that. And  
15 I don't want to speak on any of those issues today, because  
16 Presiding Judge Thelton Henderson has full review, and I don't  
17 want to get on that man's bad side. So, I think we'll leave  
18 that out of the discussion today, and I think rightfully so. We  
19 won't use any of that in reference to Ms. Garcia.

20           Mike.

21           MR. JIMENEZ: Senators, my name is Mike Jimenez. I'm  
22 Executive Vice President of the California Correctional Peace  
23 Officers Association. I was elected democratically by a group  
24 of my peers.

25           I'm here before you today to let you know that I  
26 object to any insinuation made by any other groups out there  
27 that CCPOA selects those wardens or those people that it chooses  
28 to endorse by anything other than the merits of what they have



1 done in the past. CCPOA is an open organization of men and  
2 women of Hispanic, of African-American, of white, of Asian, and  
3 of all other ethnicities. We do not make any decisions based on  
4 arbitrary or capricious matters.

5 Thank you very much.

6 CHAIRMAN LOCKYER: Next witness.

7 MR. THOMPSON: Thank you, Mr. Chairman and Members.  
8 Jeff Thompson with the California Correctional Peace Officers  
9 Association.

10 Let me qualify our opposition here. It is not  
11 personal. This is professional.

12 The fact of the matter is, the last three  
13 institutions where Ms. Garcia worked in upper management  
14 capacities, all three chapters have indicated a position of  
15 nonsupport, opposition, if you will, to Ms. Garcia's  
16 confirmation.

17 And again, these are difficult issues for us to  
18 confront. It's very easy for people to come forward and provide  
19 accolades, and of course, that's well intentioned, and so on.

20 It's quite another thing to come forward, and as one  
21 of the chapter presidents mentioned to me today, commit, as he  
22 called it, career suicide at the institution, opposing your  
23 boss.

24 So, I think you need to consider the kind of courage  
25 that it takes for these officers to come forward and lay before  
26 this Committee the types of concerns and the weighty concerns  
27 that you do have before you.

28 CHAIRMAN LOCKYER: Mr. Thompson, you don't think that





1 Senators, having some sensitivity to the work environment of  
2 state employees, is part of the liberal pap that I hear you  
3 complain about on television?

4 MR. THOMPSON: I think you're referring to my debate  
5 with Vinnie Chiraldi from the San Francisco Bay area.

6 CHAIRMAN LOCKYER: Those were the references I heard,  
7 yes.

8 MR. THOMPSON: That had to do with sentencing  
9 policies, for the most part. We're trying to deal with  
10 operational issues here, Senator.

11 CHAIRMAN LOCKYER: I understand.

12 MR. THOMPSON: But I appreciate the side track there.

13 My point here is that when you're at an institutional  
14 level, management has the hammer. This venue is the only place  
15 where citizens like the members of our Association are provided  
16 the access and the equal ground to have their issues heard.

17 I might add that we appreciate the sensitivity by  
18 where you staff has come to Centinela, has taken time to talk to  
19 our people, and has provided an objective basis for bringing  
20 forward the issues that we do have with Ms. Garcia's decisions  
21 as a manager.

22 I might add, it's only in that context that we're  
23 opposed to her. We're not opposed to her on a personal basis,  
24 and it's clear that she has friends. We hope that they continue  
25 to expand.

26 But we do think at this point, as the testimony will  
27 bear out, that she's been given too much responsibility to deal  
28 with at this level at this point.



1           Let me ask our first witness at the most current  
2 assignment at the Centinela State Prison, Al Gervin, to go into  
3 some of the details that are referenced in our memo, which  
4 Senator Petris was asking questions about earlier. The issues  
5 there have to do with managerial decisions that affect the  
6 safety and the health of employees.

7           The issue in the Administrative Segregation Unit is  
8 one example. There are others.

9           While we may have had the good fortune to dodge  
10 bullets as it relates to officers having their faces slashed, or  
11 so on, in most of these decisions, the fact that it does occur  
12 causes responsibility on our behalf to our membership to come  
13 forward and let you be aware of that, that we don't think these  
14 decisions are being made with the proper judgment or priorities  
15 we need to run our current system, which is 182 percent  
16 overcrowded, and basically like powder kegs.

17           Let me ask Mr. Al Gervin to give you some more detail  
18 on the incident.

19           MR. GERVIN: Mr. Chairman and Senators, my name is Al  
20 Gervin. I am the local Chapter President of the CCPOA.

21           And to reiterate what Jeff said, it is very difficult  
22 to come in front of a body like this and oppose your boss. She  
23 is the boss. She is the Warden.

24           But I feel it's necessary because it is my  
25 responsibility as the local Chapter President to ensure the  
26 safety of all of the officers, the staff, the inmates, and the  
27 public at large.

28           So, I felt it was necessary to come forward with some



1 of these issues. This is not a personal attack on Ms. Garcia.  
2 This is a professional discussion of competency and judgments  
3 decisions that are made that place people in jeopardy.

4 The incident in Ad. Seg., the Administrative  
5 Segregation incident, is very critical.

6 CHAIRMAN LOCKYER: Is this part of the list of 20?  
7 Is that what we're going to focus on here?

8 MR. THOMPSON: We're only going to talk about two  
9 points.

10 CHAIRMAN LOCKYER: I was going to say, is it off of  
11 that list?

12 MR. THOMPSON: It's the detail that was provided  
13 behind the memo.

14 CHAIRMAN LOCKYER: That would probably be helpful to  
15 get us to focus on whichever ones it is that you would wish to  
16 concentrate on.

17 I didn't mean to interrupt your train of thought  
18 there, but I just wanted to get us focused right on the  
19 substantive --

20 MR. GERVIN: The first one I wanted to focus on is  
21 the Administrative Segregation incident. You have a piece of  
22 paper titled "Ad. Seg. Incident." It's a separate piece of  
23 paper.

24 CHAIRMAN LOCKYER: This is not part of the 20?

25 MR. THOMPSON: Yes, it is. It's in your supporting  
26 documents.

27 CHAIRMAN LOCKYER: It's new. It's not part of the  
28 20. I'm just trying to find the right piece of people; that's





1 all.

2 MR. THOMPSON: It's on the three-page cover memo.

3 SENATOR LEWIS: What is the date of this incident?

4 MR. GERVIN: September 26, 1994.

5 CHAIRMAN LOCKYER: Go ahead, please.

6 MR. GERVIN: The reason I felt it was necessary to  
7 bring this incident forward is because it demonstrates my  
8 position that at Centinela State Prison, inmate programs are  
9 inherently more important to the administration than the safety  
10 of the public.

11 This incident in Ad. Seg., where the officer was  
12 slashed, very much could have been avoided. It should have been  
13 avoided. And I have to tell you, the day it happened, I went  
14 home and cried for a 24-year-old officer that will now live with  
15 an emotional scar for the rest of his life, as well as a  
16 physical scar, that could have been avoided.

17 The programming in the Administrative Segregation  
18 Unit should have shut down. We had just shot and killed a  
19 Hispanic inmate.

20 To clarify an earlier statement that is slightly  
21 erroneous, the inmate that did the slashing most definitely was  
22 involved in the prior day's incident. He had been involved in a  
23 previous incident, where a Hispanic inmate was shot and killed.  
24 We killed two Hispanic inmates in Ad. Seg. The inmate that  
25 attacked the officer was involved in both incidents. So, I just  
26 felt it was necessary to clarify that -- that information.

27 Yes, we did argue vehemently at the negotiations  
28 table when we activated the prison that probationary staff,



1 brand-new staff, should not work in Administrative Segregation.  
2 It was very much told to us it was the policy of the warden of  
3 the prison that they were going to work there, whether we liked  
4 it or not.

5 This is the very reason we felt that these officers  
6 should not work in that unit. It's a very tough job to do to  
7 begin with, let alone work in an environment where you're  
8 working with the worst of the worst of your institution. These  
9 are people that have misbehaved in the general population  
10 setting and have been put in Administrative Segregation because  
11 of their actions.

12 That's all I'm going to say about that particular  
13 incident.

14 CHAIRMAN LOCKYER: Sir, I am compelled by the clock  
15 to shut us down. And I apologize for the inconvenience to you.

16 MR. GERVIN: That's okay.

17 CHAIRMAN LOCKYER: I know this is going to take  
18 probably in the hours, not the minutes, to hear all of the  
19 thoughts.

20 It's 6:30 or so before these ceremonies conclude.  
21 I'm somewhat reluctant to try to bring it back into the evening.

22 With file notice, the appropriate time would probably  
23 be Thursday afternoon, if that would work with Members. We're  
24 here Friday for Friday's session, so I think the afternoon is  
25 probably wide open.

26 Would that seem to accommodate your calendars here?  
27 We can still announce on the Floor a different time. Perhaps,  
28 each of you could just check in with your office quickly. If



1 there's a problem, let me know and we can try to reschedule  
2 somehow.

3 MR. THOMPSON: Senator, on that point, given that we  
4 do have witnesses that are just beginning and haven't even  
5 started their testimony that are from out of town, can we get  
6 some notice prior to, so we can be present for your resumption  
7 of the hearing?

8 CHAIRMAN LOCKYER: Well, I assume pretty definitely  
9 it will be Thursday afternoon at 1:30.

10 MR. THOMPSON: Okay.

11 CHAIRMAN LOCKYER: My apologies to you, sir, and to  
12 any other witnesses from out of town.

13 The Governor only does this once a year for us, so  
14 we're kind of going to watch the food fight, frankly. The  
15 Assembly Republicans and Democrats haven't been together yet  
16 this year, so we might need to referee or take some of your  
17 pepper spray, or whatever it is that might work.

18 But for any witness that is inconvenienced because of  
19 our shutting down, I apologize for that. We'll start over again  
20 on Thursday afternoon at 1:30.

21 If there's any change in that, I'll make sure to call  
22 tonight or first thing in the morning.

23 MR. THOMPSON: Thank you, Senators.

24 CHAIRMAN LOCKYER: Thank you all very much.

25 [Thereupon this portion of the  
26 Senate Rules Committee hearing  
27 was terminated at approximately  
28 4:30 P.M.]






CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19<sup>th</sup> day of January, 1995.

  
EVELYN J. MIZAK  
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APPEARANCES

MEMBERS PRESENT

SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

ROSIE B. GARCIA, Warden  
California State Prison at Centinela

DON NOVEY, State President  
California Correctional Peace Officers Association (CCPOA)

AL GERVIN, President  
Centinela Chapter  
CCPOA

JIM GOMEZ, Director  
California Department of Corrections

DOUGLAS COKE, Chapter President  
CCPOA

CHUCK HERNANDEZ, Correctional Plant Manager  
Sierra Conservation Center

SAM PURVIANCE, Vice President  
Sierra Conservation Center Chapter  
CCPOA

DAVID TRISTAN, Deputy Director  
Institutions Division  
California Department of Corrections



APPEARANCES (Continued)

HECTOR LOZANO, Correctional Counselor II  
CCWA, Sierra Conservation Center

MARTIN RODRIGUEZ  
CCPOA, Centinela State Prison





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P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: Warden Garcia, if you want to come on up.

Where were we? We were taking opposition testimony, so wherever you wish to sit, please do.

Now, sir, I'm sorry for the interruption. This was a "save that thought," and I'm sure you did.

I you would wish to begin at the beginning, since you'd just really started. How did you wish to begin? However you wish to do this, sir.

MR. GERVIN: I believe Mr. Novey here --

MR. NOVEY: Chairman Lockyer, Senators, Don Novey, for reiteration here, President of the California Correctional Peace Officers Association, representing 23,000 men and women in the State of California working the corrections process, youth and adult.

We'd like to continue our testimony from the other day, thank you.

CHAIRMAN LOCKYER: All right.

MR. GERVIN: Chairman and distinguished Senators, what I would like to do is start off by reiterating that this -- my name is Correctional Officer Al Gervin. I am the Chapter President, CCPOA, Centinela Chapter, representing 583 men and women working the toughest beat in the state.

I felt it was necessary to reiterate that the decision to oppose Ms. Garcia's appointment to Warden was not a personal decision. Personalities have nothing to do with this.





1 This was a professional decision. It took a lot of thought, I  
2 believe a lot of courage to stand and oppose my boss. She is my  
3 boss. And I felt it was necessary to come forward with  
4 information.

5 The major concern that we at Centinela State Prison  
6 have as far as CCPOA and the people working the line is that  
7 under her leaderships, the policies and procedures that have  
8 been put into place jeopardize staff safety. They jeopardize  
9 inmate safety, and they jeopardize the public safety.

10 One of the most glaring examples of that is the  
11 Administrative Segregation incident, which you have a copy of a  
12 memo that was written.

13 I must say again for the record --

14 CHAIRMAN LOCKYER: Why don't you restate the facts  
15 briefly.

16 MR. GERVIN: That's what I was going to do.

17 CHAIRMAN LOCKYER: Thank you.

18 MR. GERVIN: The basic facts behind the incident  
19 were, on September 26, 1994, during a fight on an exercise yard  
20 in the Administrative Segregation Unit, a Hispanic inmate was  
21 fatally shot by a correctional officer.

22 The following day, normal program, with the exception  
23 of exercise yard, was run in the Administrative Segregation  
24 Unit. There was no cooling off period. There were no  
25 interviews to determine was there any possible retaliation  
26 against staff.

27 This goes against every common correctional practice.  
28 Common correctional practices are, when you have a fatal



1 shooting, you cool things down. You let things sit for a few  
2 days, however long it's determined. You do interviews. You  
3 determine the extent of possible retaliation against staff.

4 This was not done. We were immediately returned to  
5 normal program.

6 A very young correctional officer, 24 years old, less  
7 than four weeks at the institution, was working in the  
8 Administrative Segregation Unit.

9 It should also be noted that at the negotiations  
10 table, we argued vehemently against probationary staff working  
11 that unit because of the very safety issues. It's tough enough  
12 to be a correctional officer, let alone work in the unit where  
13 you're working the worst inmates at your own institution.

14 CHAIRMAN LOCKYER: Why do you think you lost that  
15 argument?

16 MR. GERVIN: The decision is ultimately that of the  
17 Warden, to place the officers in the positions that they want  
18 them in. And basically, that was the argument we lost. We made  
19 the argument at the table. We were overruled by the  
20 administration of the institution.

21 The officer was working in the unit. An inmate, who  
22 was in a shower, who was involved not only in this fatal  
23 shooting; he was involved in a prior fatal shooting in the  
24 Administrative Segregation Unit, and was in Administrative  
25 Segregation due to a fight with weapons on one of the -- one of  
26 the general population yards, the Level IV yard.

27 In fact, in this second incident, the inmate that was  
28 shot and killed was the person he was involved in the fight



1 with. They were together, two on one against another inmate.  
2 So, he was intimately involved in all three incidents, including  
3 the fatal shooting of his friend.

4 He was taken to the shower. He called the young  
5 officer over. The young officer, not knowing the procedures,  
6 not knowing the policies, went to the shower.

7 The inmate took an inmate-manufactured weapon out and  
8 slashed his face from above his eye, straight down his cheek, to  
9 his jaw line.

10 This young officer is 24 years old, and is now  
11 emotionally and physically scarred for life, I believe because  
12 of the policies that were put in place at that institution.

13 CHAIRMAN LOCKYER: Senator Lewis.

14 SENATOR LEWIS: I just need some clarification.

15 What was the date of the incident that that  
16 particular inmate was involved in?

17 MR. GERVIN: The date that caused him to go to  
18 Administrative Segregation?

19 SENATOR LEWIS: Right.

20 MR. GERVIN: It was several months prior to that. I  
21 don't know the exact date. I could go find it if I really  
22 needed to.

23 SENATOR LEWIS: But that particular inmate was not  
24 involved in the incident involving the six on the prior day?

25 MR. GERVIN: Yes, he was. In fact, if you look at  
26 the record, there is a pending district attorney referral,  
27 because any time an inmate is involved in a fight that results  
28 in the death of an inmate, it is referred to the district





1 attorney for possible prosecution.

2 SENATOR LEWIS: Okay.

3 MR. GERVIN: The inmate was intimately involved in  
4 all the incidents.

5 SENATOR LEWIS: Our problem here is that we've been  
6 -- staff has made available to us information that is contrary  
7 to that, and says that he was not involved in that particular  
8 incident.

9 MR. GERVIN: I've spoken to the officers that worked  
10 the Administrative Segregation Unit that day and said that he  
11 was right in the middle of it.

12 CHAIRMAN LOCKYER: The records we have, which are  
13 incident logs and various numbers -- Hernandez, Resendez,  
14 Delgado, Jimeno, Castillo, and Johnston -- in the previous day,  
15 and Montes as the one that was the slasher, this was the  
16 incident log. I don't know if there's other evidence.

17 Now, let's say he was involved in the day before,  
18 just for purposes of --

19 MR. GERVIN: Purposes of argument.

20 CHAIRMAN LOCKYER: What would that mean in your mind  
21 as to the appropriate administrative procedure with respect to  
22 shutting down, opening, or whatever?

23 MR. GERVIN: The appropriate administrative procedure  
24 is, like I said, to not run any programs.

25 What you do is, you typically interview all inmates.  
26 You start with inmates of the race that's involved in the fight,  
27 or that's involved in the fatal shooting by the correctional  
28 officer. If the correctional officer fatally shoots a black



1 inmate, you typically start with interviewing the black inmates  
2 to determine what the feeling is for retaliation against  
3 correctional staff.

4 So, because he was Hispanic, he should have been  
5 interviewed, or the interview process should have started before  
6 any program was run for those Hispanic inmates.

7 CHAIRMAN LOCKYER: Was that interview process begun?

8 MR. GERVIN: No. They immediately went to normal  
9 program.

10 CHAIRMAN LOCKYER: I don't know the right way to  
11 handle this, and I'll defer to the Committee. Is it to just  
12 take all the testimony, and if you can remember to refer back  
13 for purposes of rebuttal, to do that? Of whether, when a  
14 particular issue like this comes up, ask for any comment on the  
15 particular one.

16 I'd be happy to do it whichever way. I'll just  
17 assume we'll do the traditional, listen to all the testimony,  
18 unless some Member wants to ask for a response or rebuttal, and  
19 go ahead.

20 Yes, Senator Ayala.

21 SENATOR AYALA: I'd like to see the Warden respond to  
22 this accusation so it's fresh in our minds.

23 CHAIRMAN LOCKYER: Fine. Any Member that wants to do  
24 that, I think that's appropriate.

25 So we'll defer to Warden Garcia, if you or anyone  
26 else with you would wish to comment on either the specifics or  
27 the general policy that's been argued.

28 MS. GARCIA: This was -- this is what had happened in



1 an administrative segregated yard, which was a restricted  
2 housing.

3 Inmate Montes was, in fact, not involved. He was not  
4 on the yard that day that inmate death occurred.

5 The inmates were secured in their cells, and the  
6 yards were not implemented or, you know, brought back out again  
7 that day, nor did we intend to put them out for a while until  
8 interviews did start, until the interviewing began.

9 We don't necessarily begin the interviewing right  
10 away. At that time, we had other incidents happening throughout  
11 the facility.

12 There is no programming in segregated housing that we  
13 have. What Mr. Gervin was speaking about, programs, I think he  
14 was referring to the showering. That's a condition of  
15 segregated housing. We're mandated or are required to give the  
16 inmates a shower once every three days.

17 There are no inmates in the floor at the same time  
18 that other inmates are out there. Specifically, they're never  
19 out without being handcuffed.

20 What we did -- what I did implement was a showering  
21 procedure where no more than two inmates would be showering at  
22 one time. There are certain procedures in place that are  
23 required by the staff where the -- when they go to an inmate's  
24 cell to remove him, there should be two. The inmate should be  
25 handcuffed and then escorted directly to the shower area, which  
26 is what transpired that day.

27 CHAIRMAN LOCKYER: So, Warden, as I understand, the  
28 general procedure is, they shower three times a week.





1 MS. GARCIA: Yes.

2 CHAIRMAN LOCKYER: And in your order at the time, it  
3 was twice a week. It looks like that's the paper work.

4 MS. GARCIA: Right.

5 CHAIRMAN LOCKYER: They were going to be reduced to  
6 two.

7 MS. GARCIA: Right.

8 CHAIRMAN LOCKYER: But other programs, whatever those  
9 might be, that's what I'm trying to understand. What is it that  
10 didn't happen that you think should have happened? Was it the  
11 showers, or no?

12 MR. GERVIN: My major contention was that the shower  
13 program did not have to begin the very next day. By our own  
14 rules and regulations, like she said, every three days you must  
15 shower the inmates. There was no reason to begin showering the  
16 inmates the very next day, especially that ethnic group that had  
17 just, the previous day, been in a fatal shooting.

18 CHAIRMAN LOCKYER: That's the difference, the  
19 judgment or whatever, that was the difference between what  
20 happened and what you thought should not have happened, was the  
21 showering.

22 MR. GERVIN: Correct.

23 CHAIRMAN LOCKYER: It's not something else: let's  
24 all walk to the library together, or something. Yards are  
25 closed down, too; are they not?

26 MR. GERVIN: Yes, they did in fact shut the yards  
27 down.

28 CHAIRMAN LOCKYER: So really, the shower is the



1 issue, and whatever exposure to risk that that created for  
2 correctional officers.

3 MR. GERVIN: That's correct.

4 MS. GARCIA: When we have occurrences like this, if  
5 we have it on the mainline, where we have a general population,  
6 Gervin is correct in that we do hold back the inmates of the  
7 ethnic groups that were involved.

8 In the case of Administrative Segregation, since  
9 Montes was not in that same yard, there was no reason to  
10 restrict, you know, inmates that were not involved. At this  
11 point, we deemed him uninvolved, and the showering did go on.

12 CHAIRMAN LOCKYER: We can't relitigate all these  
13 things here, but I think we want to get at least an impression  
14 of what the controversy's about.

15 Maybe you could go on with your next point.

16 MR. GERVIN: The next point I wish to make is, the  
17 incident that occurred back in March of '94, which is also in  
18 your package. It's an incident that occurred between northern  
19 and southern Hispanic inmates. There was a stabbing on the  
20 yard. The weapon was not recovered, and as per our general  
21 policy --

22 CHAIRMAN LOCKYER: You thought the search was  
23 inadequate?

24 MR. GERVIN: Not only did I think the search was  
25 inadequate, but the lieutenant on duty at the time, Lt. Glaser,  
26 felt that the search was inadequate; requested additional time  
27 to conduct that search; requested that the program not be locked  
28 down, as it's being portrayed that we've requested lock downs.



1 We're not asking for lock downs.

2 CHAIRMAN LOCKYER: Pardon me. This is what we know  
3 of as Issue Number 7, if someone's trying to follow the written  
4 materials.

5 MR. GERVIN: What was requested by the lieutenant,  
6 and what is normal custodial practices when you've had a  
7 stabbing on a yard, is to search all of the inmates to  
8 determine, one, if you have more -- you may have more victims;  
9 you may not know. To determine if you can find the weapon.  
10 Then you conduct a thorough search of the yard.

11 The lieutenant requested additional time, additional  
12 program lag time, before programming began again, which is yard,  
13 work assignments, and things like that, to affect a complete and  
14 thorough search of the yard.

15 He was, in fact, overruled by the administration and  
16 was told to return to normal programming.

17 And the lieutenant still believes to this day that  
18 that was inappropriate, that needs to be more time to effectuate  
19 a search.

20 CHAIRMAN LOCKYER: Warden, consistent with the prior  
21 thought, did you wish to respond?

22 MS. GARCIA: Yes, I do.

23 There have been numerous incidents. I'm trying to  
24 recall back from my memory on this day.

25 When an incident occurs, several things happen. I  
26 don't make the decision based on just for making a decision. I  
27 have to get input from my supervisory staff as well as  
28 management staff. We have a meeting immediately as soon as they





1 find out what the issues were.

2 No, the yards are not put back on, or do not go back  
3 to normalcy until such time that we're able to determine what  
4 the cause was, taking into consideration, first of all, staff  
5 safety, then the inmate safety, and then the overall  
6 programming.

7 I base my decision based on the information that I  
8 received from my staff. On this occasion, I did not receive any  
9 indication or any word that anyone was concerned about bringing  
10 the program back to normalcy.

11 The yard was searched. Inmates were searched.  
12 Inmates were interviewed; staff were interviewed. And the  
13 information that I had in front in me made me determine that we  
14 could go safely back to the normal operation. We did remove the  
15 inmates involved.

16 CHAIRMAN LOCKYER: Any further comments, sir?

17 MR. GERVIN: The only comment I would wish to make is  
18 that the yard was in fact not searched. I was on the yard that  
19 day. A very cursory search was made. No metal detectors were  
20 brought out, no picks, no shovels, no additional equipment to  
21 assist us in the searching. We made a cursory search of the  
22 immediate area, and we returned to normal program.

23 CHAIRMAN LOCKYER: Was there another one --

24 MR. GERVIN: The only other point I would make is  
25 that the on duty lieutenant did in fact request additional time.

26 CHAIRMAN LOCKYER: No, I'm sorry. I meant any other  
27 incidents that you wish to comment on?

28 MR. GERVIN: Yes. There's a most recent one which,



1 unfortunately, you don't have because it just happened as week  
2 ago. I'll just state for -- what I want to state for the record  
3 is that this shows the ongoing pattern that I believe that  
4 inmate programs take priority at our institution over staff  
5 safety.

6 Just recently, another incident broke out on C  
7 Facility Yard. Two shots, in fact, were fired; two warning  
8 shots. No inmates were hurt. So, it was a fight.

9 The inmates in the immediate area were taken out of  
10 the area, the inmates involved in the fight. There were several  
11 other inmates in the area that were moved to the other side of  
12 the yard, and yard was resumed immediately.

13 We had live -- not live casings. We had shell  
14 casings on the ground, on the yard, in the area the inmates were  
15 in. The officer in the yard observation booth that has the  
16 weapon still had what is called a hot weapon that had been fired  
17 and still had a round in the chamber.

18 Standard practice is, you don't do anything until  
19 that weapon is removed, because the weapon becomes part of the  
20 evidentiary process.

21 But the facility was returned to normal programming  
22 while all of this was going on. There was no search of any  
23 other inmates other than the three inmates involved in the  
24 fight.

25 Typically, fights on an exercise yard like that, a  
26 lot of times, are diversions for something else that's happening  
27 somewhere else, to divert our attention, custodial staff's  
28 attention.



1           This was a tackle football game that was being  
2 allowed to occur on a Level IV yard, which is not typical  
3 programming for Level IV inmates.

4           And no search was made of any other inmates, other  
5 than the three inmates involved in the incident.

6           And the reason I bring it up is because it goes to  
7 the same pattern, that time and time again, we immediately  
8 return to normal inmate programs without affecting searches for  
9 weapons, other victims, or recovering anything that we need to  
10 recover.

11           CHAIRMAN LOCKYER: Senator Ayala.

12           SENATOR AYALA: In reading the issue Number 7, the  
13 CCPOA issue, it says the lieutenant that the yard be closed  
14 until the weapon was found. The weapon was never found.

15           We should keep the yard closed even up to today? I  
16 don't understand that.

17           MR. GERVIN: No. What the lieutenant requested was  
18 the yard be closed until a more effective search could be done.

19           Yes, he wanted to find the weapon. That's our  
20 purpose, is to find the weapon.

21           SENATOR AYALA: But you never found it.

22           MR. GERVIN: Because the yard was returned to normal.  
23 Once you turn the inmates loose on the yard again, you'll never  
24 find a weapon. The inmates will retrieve the weapon and either  
25 destroy it --

26           SENATOR AYALA: You've got to keep right there and  
27 search right there and then so they don't have a chance to --

28           MR. GERVIN: Right, that's what you need to do, is





1 you stop everything and search immediately to find the weapon,  
2 instead of returning to normal program.

3 Once you return to programming, you put the inmates  
4 back into the facility and back on the exercise yard, they move  
5 the weapon. They know where the weapon is.

6 SENATOR AYALA: You're talking about the symptoms of  
7 what happened.

8 How did the weapon get there in the first place? Do  
9 you ever stop to think about that? Were you folks on the ball  
10 when that weapon was brought into those grounds?

11 MR. GERVIN: Yeah, there are weapons in prison. That  
12 is a fact. We all live with that fact.

13 SENATOR AYALA: Weapons within the premises.

14 MR. GERVIN: Yes.

15 SENATOR AYALA: And how do they get there?

16 MR. GERVIN: They make them.

17 SENATOR AYALA: They make them?

18 MR. GERVIN: The State of California gives every  
19 inmates razors. Every razor has a razor blade in it. An inmate  
20 can very quickly take a razor apart and manufacture a weapon in  
21 a matter of seconds.

22 SENATOR AYALA: Matter of seconds.

23 MR. GERVIN: In a matter of seconds.

24 SENATOR AYALA: They manufacture a weapon. But these  
25 aren't regular weapons we think about when we think about guns.

26 MR. GERVIN: Right. They're not guns; they're not  
27 knives that you would go buy in the store.

28 These are inmate-manufactured weapons that they make



1 out of various items that are available to them.

2 SENATOR AYALA: Maybe we should issue all those  
3 inmates an electric razor so you don't have those blades.

4 MR. NOVEY: Senator Ayala, you've brought up a real  
5 good point.

6 Don Novey, representing CCPOA.

7 We've seen inmates make knives out of styrofoam cups.  
8 They're very ingenious, and that's probably why they're where  
9 they're at.

10 MS. GARCIA: May I respond to that incident also?

11 CHAIRMAN LOCKYER: Sure.

12 MS. GARCIA: The procedure that we have, we do have  
13 two security squad officers assigned to each yard. Any time  
14 there's a shooting in the yard, a yard down, or an incident,  
15 security squad immediately notifies the squad lieutenant and  
16 sergeant, and they respond to the area.

17 Consistent with whatever the emergency is or the  
18 nature of the incident, they search. You know, if the incident  
19 calls for a more extensive search, then that is done. The  
20 recommendation is to keep the yard down and continue searching,  
21 and we do that.

22 Again, you know, the information that I received was  
23 that there were no weapons. They did do an extensive search,  
24 along with the security squad and the staff members there. And  
25 they felt that it was -- the inmates that were involved were  
26 removed from the yard, and we felt it was safe for everyone  
27 involved.

28 CHAIRMAN LOCKYER: Additional testimony?



1 MR. GERVIN: Just for the information of the  
2 Senators, one of the points that I made on this latest incident  
3 was that when the two shots were fired, the shell casings were  
4 on the ground and available to the inmates. In fact, to this  
5 date, one has never been recovered. One is now in the hands of  
6 the inmates somewhere.

7 I found this information out yesterday afternoon from  
8 the armory officer. The office that works the armory advised me  
9 that only one of the two shell casings was in fact recovered  
10 because they weren't recovered right away and yard was resumed.

11 Once you turn the inmates loose, anything that's in  
12 the area is going to be gone. They're going to get rid of it.

13 MS. GARCIA: May I respond to that?

14 CHAIRMAN LOCKYER: What if they swallowed it?

15 MR. GERVIN: They've been known to do that before.

16 MS. GARCIA: May I respond to that incident?

17 CHAIRMAN LOCKYER: Yes.

18 MS. GARCIA: My understanding was that there was one  
19 shot fired and one casing on the yard.

20 The inmates were removed from the area for the  
21 purpose of searching for that casing.

22 In talking to my staff, I found that an officer did  
23 in fact see the casing. He placed -- rather than pick it up and  
24 take possession of it, he placed a trash can over the casing,  
25 walked away from it, and came back quite a few minutes later and  
26 found that in fact the casing was no longer there.

27 An extensive search was done of that yard, of the gun  
28 post area, and we have not recovered the weapon -- excuse me,





1 the casing.

2 CHAIRMAN LOCKYER: The trash can's still there,  
3 though?

4 MS. GARCIA: Yes, it was.

5 SENATOR LEWIS: Why did the officer do that?

6 MS. GARCIA: I have no idea, sir, but that was not  
7 within procedure.

8 SENATOR LEWIS: Has anyone on your staff questioned  
9 the officer to why he did that?

10 MS. GARCIA: I'm sure they have.

11 SENATOR LEWIS: You're just not aware of the answer  
12 yet?

13 MS. GARCIA: No, I'm not aware of it.

14 SENATOR LEWIS: Mr. Gervin, are you aware of that  
15 trash can incident?

16 MR. GERVIN: Yes. That's what was explained to me by  
17 the armory officer, that in fact the trash can was placed over  
18 the top of the shell casing.

19 The officer was ordered to do so by the on duty  
20 lieutenant.

21 SENATOR LEWIS: Have you had a chance to talk to the  
22 on duty lieutenant as to --

23 MR. GERVIN: As a matter of fact, I have spoken to  
24 the on duty lieutenant, and it's another point that I need to  
25 make in this.

26 You need to understand, I have a pending grievance on  
27 this entire issue, and I'm not here to resolve that grievance.  
28 I just believe that the information --



1 CHAIRMAN LOCKYER: How long ago did this happen?

2 MR. GERVIN: This happened on the 4th, January 4th.

3 I spoke to the on duty lieutenant about the entire --  
4 my entire concerns about the way the issue was handled, the  
5 safety concerns that I've had, the returning to normal program.

6 And in accordance with my contract, I sat down with  
7 the on duty lieutenant who had made the decisions. His  
8 statement to me was, and this is part of my argument in this  
9 grievance conference, that it is the policy of the Warden here  
10 at Centinela State Prison that inmate program will continue with  
11 as little interruption as possible. That was the statement that  
12 was made to me by the on duty lieutenant.

13 SENATOR LEWIS: What does that have to do with  
14 picking up the casing?

15 MR. GERVIN: It doesn't have anything to do with the  
16 casing, other than he just wanted to cover it so he could get  
17 the yard back up and go back to programs.

18 I guess he felt that would secure the casing, with  
19 the inmates walking around it. I don't know what his theory  
20 was.

21 MS. GARCIA: May I address that, please?

22 CHAIRMAN LOCKYER: Certainly.

23 MS. GARCIA: This is news to me.

24 I did speak to my staff at the institution, and no  
25 one is aware of the lieutenant giving instructions to that  
26 officer.

27 Someone did talk to that officer, and the feedback I  
28 got back was that in fact the inmate -- the staff left it there



1 on his own volition and walked away from it.

2 It could be that he wasn't knowledgeable in the  
3 procedure or process. I don't know at this point, but he did  
4 walk away. And there was no indication to me that a lieutenant  
5 had ordered him or instructed to leave it there.

6 SENATOR LEWIS: That strikes me as very bizarre  
7 behavior.

8 CHAIRMAN LOCKYER: Yes, it seems like you'd put it in  
9 your pocket. I don't know.

10 Mr. Gervin, have you concluded, or were there any  
11 other things you wanted to raise?

12 MR. GERVIN: That was all the examples I wanted to  
13 give, because I could go on and on and on.

14 CHAIRMAN LOCKYER: We've seen the memos with a longer  
15 list, so I think we're aware of the general idea.

16 MR. GERVIN: Right, and that's why I brought these  
17 three examples forward.

18 CHAIRMAN LOCKYER: Have you ever been in an  
19 institution, a different one, with Warden Garcia?

20 MR. GERVIN: Yes, I have. I was at Pelican Bay State  
21 Prison when she was an Associate Warden there.

22 CHAIRMAN LOCKYER: Did you have occasion to work  
23 together there?

24 MR. GERVIN: No. She worked the Security Housing  
25 Unit, and I worked general population.

26 CHAIRMAN LOCKYER: Thank you, sir.

27 Were you going to add something?

28 MR. GERVIN: I had another point to go over.





1 CHAIRMAN LOCKYER: Sure, please.

2 MR. GERVIN: One of the other major issues, if you  
3 look at the cover letter we gave, was the landscaping, ongoing  
4 landscaping, beautification processes, and things like that.

5 I understand that in the bond measure that creates a  
6 prison and funds a prison, that a certain amount of money is set  
7 aside specifically for the purpose of landscaping. I do not  
8 have an issue with that. That is in the bond. It is required,  
9 that the prison must aesthetically fit into the community.  
10 Communities request that, and that's the way they're funded.

11 What I have a concern with is ongoing projects that  
12 are done, and if the money is not available to retrofit or  
13 remodel my cell doors to have cuff ports in the Level IV Unit,  
14 my question is, how do we have the money to completely remodel a  
15 conference room in a brand-new prison?

16 One of the conference rooms in this brand-new prison  
17 was completely remodeled, with a beautiful oak table, recessed  
18 ceiling. I have pictures, if you'd like to see it.

19 That's my concern. We have a remodeling project that  
20 remodels a conference room at a brand-new prison, yet we totally  
21 ignore a safety issue of having cuff ports in a Level IV  
22 setting, which by the Department's own design criteria, calls  
23 for cuff ports in cell doors.

24 SENATOR LEWIS: Mr. Gervin, when was this conference  
25 room remodeled?

26 MR. GERVIN: It was just remodeled just prior to the  
27 recent wardens' conference that occurred at Centinela State  
28 Prison.



1           SENATOR LEWIS: And when was that?

2           MR. GERVIN: Within the last month is when the  
3 conference was.

4           SENATOR LEWIS: Was your complaint or displeasure  
5 about the conference room included in any of the materials you  
6 submitted to this Committee?

7           MR. GERVIN: No, because they just finished the  
8 project, and up until recently you couldn't even get in the  
9 conference room because they kept the door locked while they  
10 were doing the remodeling. So, no one knew what they were even  
11 doing in there.

12          SENATOR LEWIS: When were you aware of that?

13          MR. GERVIN: I just became aware of it maybe a month  
14 ago, but I was just able to obtain the photographs of it.

15          SENATOR LEWIS: I guess my concern about that element  
16 of your testimony is that, or other testimony, is that up until  
17 now, the complaint has been the problem with the landscaping.  
18 And now, all of a sudden, at the Committee we're hearing that  
19 the problem's the conference room.

20          MR. GERVIN: No. It really hasn't been landscaping  
21 itself. It's just overall beautification projects, which part  
22 of that is the landscaping. There's also -- they also made a  
23 change to the front of the administration building. They put,  
24 for lack of a better word, a hotel canopy over the front  
25 entrance of the administration building. Money was spent for  
26 that.

27               The Warden's office area was totally remodeled.

28               And my concern is, we have the money available to



1 spend for those types of things to make our jobs more  
2 comfortable, but we're told at numerous negotiations tables,  
3 numerous meetings, that we don't have the money available to  
4 make the safety improvements in the Level IV facility, which is  
5 the food ports, the cuff ports. That's what I have trouble  
6 reconciling.

7 And I have trouble reconciling that to my membership,  
8 because they look -- they work the line. They work everyday in  
9 the facility, and they see that there is no -- there's no way to  
10 place mechanical restraints on an inmate who is being aggressive  
11 or abusive in his cell safely. You have to open the cell door  
12 to effectuate that.

13 SENATOR LEWIS: Warden, can you tell us how much  
14 money was spent on the remodeling?

15 MS. GARCIA: I want to make it clear that my office  
16 was not remodeled.

17 As we ran out of room after activation, I no longer  
18 have a conference room adjacent to the Warden's office  
19 conference. I'm using that as office space. And I do have a  
20 need for a conference room in which to bring the media, the  
21 daily tourists from the community, and so on.

22 We -- the Department funds educational programs for  
23 every institution. We have an educational program that includes  
24 -- we get monies for the educational programs, which vocational  
25 instruction as well as academic.

26 Along with that funding comes funds for materials.  
27 These materials are utilized for the training inmates in these  
28 programs to learn trades.





1           It is true that a big oak table was built. It was  
2 built by the inmates in the vocational program, Mill and  
3 Cabinet. Funds used from the educational fund for materials.

4           We have also built concrete tables and benches for  
5 the visiting areas that have been built by Vocational Masonry.

6           We do have a canopy that I had constructed for the  
7 front of the administration building, and we're having more  
8 constructed for the entrances, all staff entrances. When the  
9 summer heat reaches at 128, it's kind of hard for staff in these  
10 areas. And all the materials were bought at a minimal expense,  
11 and all were manufactured by the inmates in these vocational  
12 programs.

13           Vocational Upholstery built the canopy in conjunction  
14 with Vocational Welding, who built the structures to place the  
15 canopy on. There are benches that have been built by the  
16 Vocational Mill and Cabinet in conjunction with the Welding Shop  
17 for staff to be able to sit in various areas of the whole  
18 institution on their breaks.

19           While we're doing all this, I think that everybody  
20 wins. It's a win-win situation, in that it defrays a lot of the  
21 taxpayers' dollars. It allows for the enhancement of the  
22 institution, and also the inmates are learning a trade.

23           SENATOR LEWIS: Can you give me a handle on just  
24 approximately how much money might have been spent on remodeling  
25 or other purchases that were fungible dollars that could have  
26 been spent on enhancing safety in the prison? Were any of those  
27 dollars fungible, or were they all --

28           MS. GARCIA: The amount of money that I spent I could



1 not spend on salaries or wages, or any other projects. It was a  
2 minimal amount.

3 It cost a total of approximately \$3,000.

4 CHAIRMAN LOCKYER: Senator Ayala.

5 SENATOR AYALA: Ms. Garcia, when you submit your  
6 yearly budget to, in this case, Mr. Gomez, don't you indicate  
7 you want so much money for maintenance, so much money for the  
8 road construction within the premises, security. And if it's  
9 approved, you can only use it for that particular case?

10 MS. GARCIA: That's correct.

11 SENATOR AYALA: So, the money that you used for this  
12 table was earmarked for that; was it not?

13 MS. GARCIA: Pardon?

14 SENATOR AYALA: The money that you used for the  
15 table, and whatever was used for that, was earmarked for that  
16 purpose in your budget?

17 MS. GARCIA: Correct.

18 SENATOR AYALA: I don't understand your problem.

19 MR. GERVIN: The problem that I have with it is  
20 having sat at numerous negotiation tables with the Department of  
21 Corrections. It was represented to myself and CCPOA, many, many  
22 of those tables, that specific budget items are not necessarily  
23 -- the money doesn't necessarily have to be spent on that.

24 The question becomes, O&E versus payroll.

25 SENATOR AYALA: That budget is approved with that  
26 money going for that purpose. You can't transfer it to security  
27 or anything else. Am I correct in assuming that?

28 MS. GARCIA: That's correct.



1 MR. GERVIN: That's not what's been represented by  
2 the Department of Corrections. In fact, at a particular  
3 negotiations table, it was represented that each institution,  
4 and it was represented by a very high person in the Department  
5 of Corrections, and I'm not going to say his name.

6 SENATOR AYALA: Are these items negotiable?

7 MR. GERVIN: No, no. What was represented to CCPOA  
8 at this negotiation table was, each institution is given a pot  
9 of money. This was represented by the Department of  
10 Corrections. And as long as the institution lives within that  
11 pot of money, the Department of Corrections doesn't care what  
12 they do with it, as long as they live within that pot of money.

13 SENATOR AYALA: They get a block grant with no  
14 spelled out issues?

15 MR. GERVIN: That's correct. That's what was  
16 represented to CCPOA at a negotiating table.

17 SENATOR AYALA: I've never seen a budget like that  
18 before, and I've been here 21 years.

19 MR. GOMEZ: I'm Jim Gomez, Director of Corrections.

20 Mr. Gervin's talked about representations of the  
21 Department. I think we need to put this in perspective.

22 What Mr. Gervin asked for at the bargaining table was  
23 new cell doors with cuff ports. And I understand that. A  
24 multi-million dollar issue.

25 What we're talking today about is inmate funds. I  
26 mean, academic and vocational education funds; that I have an  
27 expectation that wardens beautify institutions. I have an  
28 expectation that they put covers in 120 degree heat for staff,





1 and for visiting, and for inmates.

2 I have an expectation that academic and vocation  
3 programs produce work product. That you teach someone to do a  
4 vocation project, it'd be nice that you had a product when you  
5 were done. And that's the whole purpose of vocation.

6 So, what I think Mr. Gervin is saying is, he wished  
7 that we had made a policy decision to move this money from  
8 vocational education, these supplies, and direct it toward the  
9 food ports.

10 It was a multi-million dollar issue that Mr. Gervin's  
11 talking about. That decision is made in Central Office. It's  
12 not made by Ms. Garcia in terms of those food ports that he  
13 wants, and we turned him down at that institution as well as  
14 other institutions that we have converted.

15 And I think they know that's a Central Office  
16 decision on cuff ports, not an institution decision.

17 SENATOR AYALA: But the gentleman just said that he  
18 understands that the prisons are given a block grant to be used  
19 any way they see; that priorities are set by that particular  
20 prison.

21 Is that correct?

22 MR. GOMEZ: The prisons have three or four separate  
23 fund sources. One is salaries and wages and benefits. Another  
24 is operating expense and equipment, and a third is education,  
25 which is -- traditionally, education supplies are separate.

26 SENATOR AYALA: Used for those purposes only?

27 MR. GOMEZ: That we use for those purposes.

28 Now, money has been moved from operating expense to



1 salaries and wages, and money has been moved from salary and  
2 wages to operating expense. Mr. Gervin's right about that.

3 But in terms of the magnitude, to move \$3,000 from  
4 here, or \$5,000 from here, is not an uncommon issue.

5 To move \$2 million to build these ports that he's  
6 talking about, we're talking an entire capital outlay project.  
7 You have to go through the capital outlay process. It's a two  
8 to three-year process. Come to the Legislature and lay that  
9 out.

10 We made clearly the decision that we were not going  
11 to do that. And locals negotiate, but you should be clear.  
12 That's a decision that comes to my level at Sacramento relative  
13 to those food ports.

14 And we believed when we activated that, there's a  
15 temporary Level IV. It's not a permanent Level IV. And we  
16 believed that it would not be a good expenditure of taxpayer  
17 funds for, on a temporary basis, to go in and change out 1,000  
18 cell doors, which is what the request was: to change out 1,000  
19 cell doors.

20 SENATOR AYALA: You answered my question.

21 CHAIRMAN LOCKYER: Mr. Gervin.

22 MR. GERVIN: I'm just going to make one minor, little  
23 point, and then we can move on.

24 The information that was presented to us at the  
25 negotiation table was that the cost to the institution would be  
26 \$100,000. That information came from the Chief Deputy Warden,  
27 who was in Planning and Construction when the institution was  
28 developed.



1           It was not presented as a multi-million dollar  
2 project. It was simply presented as a cost of approximately  
3 \$100,000 to put cuff ports in.

4           That's why I believed it was an issue.

5           CHAIRMAN LOCKYER: Well, if you thought it was a  
6 multi-million, if you hadn't been misinformed, assuming that the  
7 Director's facts are the correct ones, would that be likely to  
8 be a Central Office issue, rather than a local?

9           MR. GERVIN: Absolutely. I agree. If it was a  
10 multi-million dollar project --

11          CHAIRMAN LOCKYER: The answer is yes.

12          MR. GERVIN: -- but that's not what was represented  
13 to us.

14          CHAIRMAN LOCKYER: Thank you, Mr. Gervin.

15          Did others here want to comment?

16          MR. COKE: Mr. Chairman, Senators, my name is Doug  
17 Coke. I come from Sierra Conservation Center where I'm a  
18 correctional officer.

19               I'm also the Chapter President of the California  
20 Correctional Peace Officers Association.

21               On Monday, we heard a little bit of representation  
22 that Ms. Garcia had always had 100 percent of her staff 100  
23 percent behind her.

24               Well, back in April 3rd, 1992, we placed 150 officers  
25 and free staff alike, people representing the California  
26 Correctional Peace Officers Association, the California State  
27 Employees Association, Allied Trades and Maintenance, the  
28 American Federation of State, County and Municipal Employees on





1 an informational picket line.

2 Prior to going out on the picket line, we had a CCPOA  
3 general members meeting. I represent approximately 350 officers  
4 at Sierra. Of that, I ran three different meetings, and of that  
5 I had an unprecedented 300 participants. I've never had a  
6 meeting that size before or since.

7 Of those 300 participants, there were two votes  
8 taken. Both were unanimous. One was a vote of no confidence in  
9 Ms. Garcia and her policies, and the other was a vote to hold an  
10 informational picket to take our issues to the media, as the  
11 information flow between administration and ourselves had  
12 ceased.

13 CHAIRMAN LOCKYER: What were the issues?

14 MR. COKE: I'd like to address one of the major  
15 issues, rather than open up a quagmire. I'd rather just go down  
16 one road. It'll be a whole lot easier for all of us.

17 CHAIRMAN LOCKYER: That'd be helpful.

18 MR. COKE: One of the biggest issues --

19 CHAIRMAN LOCKYER: Asbestos.

20 MR. COKE: -- was the asbestos issue; that's correct,  
21 sir.

22 In the Mariposa and Calaveras yard offices, that's  
23 the area within the units where yard activities -- volleyball,  
24 horse shoes, handball, even supplies for the dorms, cleaning  
25 supplies, et cetera -- are issued out.

26 There are large pipes, four to six inches, that are  
27 encased with asbestos. This asbestos is sealed with a plaster  
28 type product. Its actual composition I couldn't speak to.



1           The pipes had a bad habit of hammering, like a water  
2 hammer; created cracks in the seal coat around the asbestos.  
3 This led to the asbestos dust raining down on the officers that  
4 were assigned to that unit, myself being one of them.

5           On a daily basis, at any given time, you could come  
6 into that office, whether our inmates had cleaned it or not, and  
7 get the appearance of over a year's worth of dust in your house.  
8 You could sweep it with you hand, and you were dusty from the  
9 products coming down on you.

10          We brought the issues via the chain of command per a  
11 memo Ms. Garcia had authored in January of this same year to our  
12 supervisors, and ultimately it led to Ms. Garcia. We requested  
13 in writing and verbally that either the asbestos be removed or  
14 properly sealed, or if, for some reason, the abatement was an  
15 expense that she couldn't handle with her budget, and we  
16 understood that, simply move the function of that office ten  
17 vertical feet upstairs to an office that is a storage and  
18 alternative barber shop within the unit.

19          That area had been used on three different occasions  
20 the preceding 12 months for that exact purpose. With different  
21 things going on out in the yard office, they had moved the  
22 function of the yard office upstairs.

23          We simply asked that that occur again until she was  
24 presented the opportunity to address the issue.

25          We were told point blank: no, it was not going to  
26 happen. And in writing, she responded back that there was no  
27 ongoing asbestos problem at Sierra Conservation Center, and  
28 that's quote. It's within the package that I believe you



1 Senators have got.

2 CHAIRMAN LOCKYER: We've received that. And it was  
3 later determined that there was a problem.

4 MR. COKE: Yes, sir.

5 Now, I understand -- recently I've come to some  
6 information that perhaps the numbers that she was operating with  
7 didn't qualify it for certain standards. I can appreciate that.

8 But if that was the case, why, immediately after  
9 being contacted by the newspapers, did she have it encapsulated?  
10 That's one of our biggest issues.

11 I have had two very close friends of mine die from  
12 asbestoses. It is without a doubt the most horrible thing I've  
13 ever seen a person die from.

14 My concern then and now is the potential deaths of  
15 my partners.

16 CHAIRMAN LOCKYER: May I ask for a response?

17 MR. COKE: Absolutely.

18 MS. GARCIA: Yes.

19 CHAIRMAN LOCKYER: Sir, if you want to come up on  
20 this issue, too.

21 MS. GARCIA: I remember that instance. Officer Coke  
22 did raise the issue of asbestos in that area.

23 We had had, recently had, staff in maintenance  
24 specifically trained in hazardous materials, and those type of  
25 issues, we had the maintenance people go out to the area. And  
26 we closed the office area down, and air samples were taken of  
27 that office, along with some particles that were taken from a  
28 disk that had fallen from the pipe wrappings.





1           The air sample was submitted to San Joaquin  
2 Environmental, Incorporated, and the results came back which  
3 were less -- resulted less than the hazardous concerns that  
4 would indicate that this was asbestos.

5           We notified the union of this. Yes, the pipes were,  
6 again, resealed by the maintenance person that was an expert in  
7 this field. He assured the union and myself and the  
8 administration that there was no asbestos in that area. He also  
9 documented a memo to that effect.

10           That was like in October of 1991, if I remember  
11 correctly.

12           About March the following year, 1992, the union did  
13 submit a grievance in respect to the same issue, that there was  
14 asbestos raining on them, on the desk, and what have you.

15           I again responded to the area to see for myself again  
16 what it looked like. And from a layman's eye who's not familiar  
17 with haz-mat materials, and what have you, it did appear that  
18 there was a lot of particles on the desk, and what have you.

19           And I was again assured and reassured by the  
20 maintenance staff that this was in fact not asbestos.

21           What I did, in good faith, based on the fact that the  
22 concern was ongoing, even though we had results that there was  
23 not asbestos air-borne in this immediate area, I had the  
24 maintenance people cost out what it could cost to have the pipes  
25 encapsulated. And I wanted for them to cost out what it would  
26 cost for not only Mariposa yard office, but the Calaveras yard  
27 office also.

28           The cost was very minimal. It came back that it was



1 approximately \$367 to encapsulate both offices. So, I  
2 immediately authorized that they do this immediately.

3 This was like on the 16th. It was completed on the  
4 18th, or somewhere along those lines. Within three days. That  
5 was in March of '92.

6 Subsequent to that, we took another air sample of the  
7 office, and secure the office, took another air sample, and it  
8 came out also below the standard.

9 We shared this with the union. They agreed there  
10 were no more concerns.

11 When this picketing occurred, I was not aware of the  
12 issues on hand. And I was pretty surprised to hear that it was  
13 asbestos when, in fact, the pipes had been encapsulated prior to  
14 the informational picketing.

15 CHAIRMAN LOCKYER: Officer Coke, the sort of gossip  
16 you hear, which at least in this building is generally  
17 inaccurate, but I raise it for your response to the comments you  
18 hear that are something like this.

19 That when Ms. Garcia was placed in Sierra, one of the  
20 controversial and early decisions she made was to redistribute  
21 holidays, and overtime, and so on, among staff. That there was  
22 a perception that certain favored, kind of the good old boys at  
23 the institution, had a disproportionate amount of those benefits  
24 running their direction. And that when she tried to make it  
25 fairer, that that's what provoked opposition in the unit and  
26 subsequently.

27 Does any of that ring a bell at all with you?

28 MR. COKE: No, sir. And I'd like to tell you that at



1 the time she was here, with my seniority numbers, I probably  
2 would have supported that because I would have reaped the  
3 benefits.

4 The reality is --

5 CHAIRMAN LOCKYER: You don't remember changes --

6 MR. COKE: -- that did not occur.

7 CHAIRMAN LOCKYER: -- like that, or discussions of  
8 that happening at Sierra?

9 MR. COKE: Not that I recall, sir, no, sir.

10 I'd like to point out that although Ms. Garcia did  
11 ultimately encapsulate completely the asbestos covered pipes,  
12 the day we went out on the picket, they were not completely --  
13 as a matter of fact, they were not encapsulated.

14 Now, I understand that you have some documentation  
15 that states otherwise. But I would tell you, sir, I could  
16 easily back-date any document that I chose, but it takes a  
17 little bit more effort to come up here and look you dead square  
18 in the eye and say that is not true.

19 Now, the California State Employees Association,  
20 ATEM, ASME, all agreed with us.

21 One of the things that was brought besides the  
22 pictures that we lay out here, I've got a signature board here  
23 that has over 150 signatures of people that participated on the  
24 line. They knew that someday their names would be right here  
25 before you guys. And most people are afraid to confront their  
26 boss.

27 If I stood here and told you I wasn't as nervous as a  
28 cat on a hot tin roof, I'd be lying. Because she's my ex-boss;





1 she could be my boss again someday.

2 But the reality is what's right is right.

3 CHAIRMAN LOCKYER: I understand.

4 MR. COKE: And if I don't do this, I would be wrong.

5 CHAIRMAN LOCKYER: From my understanding, if she  
6 isn't confirmed, she's going to be sent back.

7 [Laughter.]

8 CHAIRMAN LOCKYER: I made that up. Probably I  
9 shouldn't joke that way. I apologize.

10 MR. COKE: Senator, you need to hear it. If you send  
11 Rosie back to Sierra, I'd be delighted to work with her today.  
12 I have no problem with that.

13 I simply have a problem with certain judgments that  
14 she has shown.

15 CHAIRMAN LOCKYER: Thank you.

16 Yes, grab a mike.

17 MR. HERNANDEZ: I'm Chuck Hernandez, and I was the  
18 chief of plant operations for Warden Garcia at the time.

19 When these issues came out, Warden Garcia made sure  
20 that I took care of them, and they were wrapped.

21 I think what Mr. Coke is talking about, the last  
22 encapsulation was with plastic vinyl liner, but they were always  
23 wrapped. Any issue that came out, I talked to Mr. Coke and  
24 assured him that we were wrapping them and that the Warden was  
25 aware of it.

26 This was one of the big issues as far as that, to  
27 make sure they were wrapped. And she personally had me meet her  
28 there every time.



1           Like I said, we took air samples. Everything was  
2 fine.

3           CHAIRMAN LOCKYER: All right.

4           Senator.

5           SENATOR PETRIS: I've been puzzled both days of the  
6 hearings.

7           These things, we talk about policy and judgment. But  
8 I find that the biggest differences are on the facts.

9           Here's a guy who did the job. There's a fellow who  
10 says, "No, it wasn't done at that time."

11           Those are facts. They're not opinions, and that  
12 puzzles me.

13           Now, on the overview we got, it showed two or three  
14 other examples.

15           Issue number one, this part of the 20: the use of a  
16 37 millimeter gas gun as a primary weapon in housing units.  
17 CCPOA says that its in-service training book incorrectly lists  
18 that gun as the weapon of choice.

19           Ms. Garcia says that's not even mentioned in the  
20 training book.

21           Now, it's a book. It either has it in there or it  
22 doesn't have it in there. Why should we be wrestling with this,  
23 without even having the benefit of the book that we can see for  
24 ourselves?

25           The next one: recent training teaches a 37  
26 millimeter is a primary weapon. It's also been indicated in  
27 training that the shotgun will become the weapon of choice.  
28 There's nothing in the DOM to indicate either.



1           Comment, the 37 millimeter is the weapon of choice in  
2 non-life-threatening situations in housing units. Final  
3 regulations are being drafted. The shotgun mentioned by CCPOA  
4 is the type that shoots bean bags, and they, too, are nonlethal.

5           That's quite a difference. And all the way through,  
6 it seems that one side is saying, "This is so," and the other  
7 side is saying, "It's absolutely not so."

8           I find it difficult, you know, to find out what's  
9 really going on. And I'm not looking at policy decisions here.

10          She's been attacked. I was very sensitive to the  
11 asbestos issue. We've been very concerned about that up here.

12          Now we hear she kind of ignored it; didn't seem to be  
13 upset about it; didn't do much, if anything.

14          She says it was encapsulated by a certain date,  
15 period.

16          Somehow, we ought to figure out a way to resolve the  
17 facts in this before we reach a conclusion as to judgment. Do  
18 you know what I mean?

19          MR. COKE: Senator, within the packet that you have  
20 from Sierra Conservation Center, because I can only speak to  
21 Sierra, you'll find in the body of that, my job steward, Officer  
22 Kirkendale speaks very clearly to numerous band-aid approaches.

23          When they did the band-aid approach for a very short  
24 time, it was encapsulated. So, that would be an accurate  
25 representation on their part.

26          Our issue is, finalize. Our issue was doing the job  
27 correctly. And until you have the opportunity to do that,  
28 remove the officers from the area in jeopardy.





1 I have no issue with whether or not maintenance  
2 attempted to do the job.

3 SENATOR PETRIS: You're claiming it wasn't completed?

4 MR. COKE: That is correct, sir.

5 It's not a matter of: I said this, and they said  
6 that. It's not a matter of that at all.

7 The documentation that we provided to you speaks very  
8 clearly to their attempts. I have no issue with that  
9 whatsoever.

10 Our issue is simple, until they were able to do it  
11 correctly, please remove the staff from the area in jeopardy.

12 MS. GARCIA: May I address that, Senator?

13 SENATOR PETRIS: Yes, would you please clarify that?

14 MS. GARCIA: Yes.

15 The staff were removed from this area. They were  
16 told not to enter while they were encapsulating these pipes.

17 I personally went over there and found some staff  
18 inside that I had to remove. They claimed that they were not  
19 concerned, including Mr. Coke. I told them that they would have  
20 to abide by this until the job was completed. That area was  
21 secured.

22 Air samples were taken, and we have copies of the air  
23 sample results, which were below, again, standard. There was no  
24 concern to asbestos.

25 At that point we again opened up the office.

26 SENATOR PETRIS: Well, there you are again. It's a  
27 conflict of the facts. That's what the jury decides in a jury  
28 trial. They don't decide the law; they decide the facts.



1 MS. GARCIA: May I state also for the record that the  
2 grievance was dated 3/11/92. This job was completed on the  
3 18th; the 16th or the 18th of March, which was just within days  
4 later.

5 SENATOR PETRIS: Well, she says it was completed on  
6 the 18th. You're saying it's not complete yet.

7 MR. COKE: That's incorrect, sir. It is complete  
8 today.

9 We're talking -- if we're talking in that time zone,  
10 which is 1992, the time tables that she is mentioning are  
11 incorrect.

12 If you'll take a good look at that grievance, her  
13 response of the 11th denies the grievance. Now, why the heck  
14 would you tell me no and then go do it anyway?

15 SENATOR PETRIS: Maybe she can answer that.

16 MS. GARCIA: I didn't hear the question. Could you  
17 repeat the question?

18 MR. COKE: I said, Rosie, what I said was, is on the  
19 11th, you told me no, you would not deal with it; there is no  
20 asbestos.

21 And yet you're now saying, on the 18th, several days  
22 later, you had it completely done?

23 Why would you tell me no, and then do the job?

24 MS. GARCIA: What I said was, there was no asbestos  
25 concerns.

26 We again went out, on your insistence, to the area.  
27 And that's when I determined, made the determination to take a  
28 look at what it would cost to do this in good faith so that this



1 issue would go away. And the cost was very minimal, \$367, or  
2 something to that effect.

3 So, I made the decision to go ahead and do that even  
4 though there was no concern for asbestos.

5 SENATOR BEVERLY: Senator Petris, anything further?

6 SENATOR PETRIS: Yes, if I can find it.

7 SENATOR BEVERLY: Should we go on to another witness?

8 SENATOR PETRIS: Yes.

9 SENATOR BEVERLY: Next witness.

10 SENATOR PETRIS: I'll come back to it, if I may.

11 MS. GARCIA: May I say something for the record?

12 SENATOR BEVERLY: Just a moment. Let's try and stay  
13 in order here. We're going back and forth on this one issue,  
14 and the Senator has some questions, and we'll get back to it.

15 Do you have testimony, sir?

16 MR. PURVIANCE: Yes, I do.

17 SENATOR BEVERLY: Go ahead.

18 MR. PURVIANCE: My name is Sam Purviance. I'm a  
19 correctional officer at Sierra Conservation Center, and I'm also  
20 Vice President of the local chapter there, and I was during the  
21 tenure of Ms. Garcia at Sierra Conservation Center while she was  
22 Warden, or Acting Warden, and while she was our Chief Deputy  
23 Warden.

24 What I had to say today happened in the top  
25 disciplinary committee meeting hearing held in the  
26 Administrative Segregation Building.

27 And what happened was, an inmate was brought before  
28 the committee with two disciplinaries. One disciplinary had to





1 do with a fight. He got rolled from camp. Got rolled up means  
2 he was transferred back to the main institution from a satellite  
3 camp, which was Base Line, which is real close to the  
4 institution.

5 He got in a fight with several inmates, and we later  
6 found out he was being pressured by those inmates there. And he  
7 had to fight and get out of camp before he was made to things he  
8 didn't want to do.

9 During the process of sending an inmate back to the  
10 main institution from camp, what officers at the camp do is  
11 inventory. They collect and inventory the inmate's property  
12 that he keeps in a locked locker that he has the combination to.  
13 Other inmates don't have the combination to that, and officers  
14 have a key to that in order to get in.

15 When the officers unlocked the locker and began to  
16 inventory the property, there were several live ammunition  
17 rounds found in that locker. And he was immediately written  
18 another disciplinary report, besides the one he got originally  
19 sent back to the institution for, fighting, and it was for  
20 having live rounds.

21 I recall that they were .22 rounds, Rem fire  
22 cartridge. And the only I didn't write down was whether there  
23 was two or three, because I can't remember exactly how many  
24 there were. I just remember there was more than one.

25 During the ICC committee, this was the fall of '92,  
26 while Ms. Garcia was the Chief Deputy Warden, and this committee  
27 is chaired by either the Warden or his designee. And a lot of  
28 times it was very common for the Chief Deputy Warden to take his



1 place there as chair of the committee.

2 And Ms. Garcia was chairing the committee that day,  
3 and I was the escort officer who brought the inmates into the  
4 room where the committee was being held, seated the inmate, and  
5 stood there and made sure he didn't make any funny moves,  
6 because the committee was determining what was going to happen  
7 to him.

8 During the course of this, Ms. Garcia and the  
9 committee upheld what they call affirmation of credit loss. The  
10 inmate was disciplined by taking so many good time work credits  
11 from him. And during that process, the live ammunition found in  
12 his property was totally dismissed.

13 We don't usually argue in committee. And it was  
14 never really my place to speak, because we had the Warden, or  
15 Chief Deputy Warden, and other things, but they did appreciate  
16 input.

17 So, after the inmate was excused, I asked the  
18 committee, and Ms. Garcia specifically, why live ammunition  
19 would be dismissed, especially when you come to a Rem fire  
20 cartridge.

21 And in my report, I wrote to you that with her vast  
22 experience in being a leader of a security squad, who -- they do  
23 a lot of searching, and I've imagined they have found what we  
24 call in Corrections a zip gun, or a homemade inmate gun that's  
25 made right there in premises that has the ability to fire  
26 cartridges. And a Rem fire cartridge being the easiest to fire,  
27 you don't need any particular spot to strike, that it was  
28 amazing to me that it would be that easily dismissed.



1           And I was told in the committee by Ms. Garcia that I  
2 was not part of that decision making process of what to dismiss  
3 and not to dismiss against inmates.

4           After the committee broke up, I was still somewhat  
5 shocked that something that dangerous, especially in camp, and  
6 now we know the inmate had been pressured by inmates into  
7 fighting or doing whatever they wanted to do, so he fought, with  
8 that ammunition at his disposal, he could have used that at his  
9 own free will. He could have used that -- there's forestry  
10 staff in camp; there's correctional staff in camp; there's other  
11 inmates in camp. He could have effected whatever he wanted to  
12 effect on whoever he wanted to affect it.

13           And we also have a possibility of a walk-away at  
14 camp. There's not fences and armed personnel there to keep them  
15 in, and he could have affected that on the public, whatever  
16 he needed to do. If he needed a vehicle, he could make his own  
17 zip gun out of a piece of pipe and whatever he wanted to strike  
18 the Rem fire with.

19           And I chose this example to what I thought was a  
20 pretty blatant example of the types of decisions that affect  
21 correctional staff that come from the top.

22           I talked to people who used to work the ICC committee  
23 with me, and one's now a CC II instead of a CC I, and some of  
24 them have promoted. And I told them what I was involved with  
25 when I got back Tuesday to work.

26           And they said that they had to eat a lot of things in  
27 committee that they wished they didn't have to as far as the  
28 inmate disciplinary process, where things were drastically





1 reduced or dismissed.

2 I think that's what places the ultimate burden on  
3 probably this Committee to decide if Ms. Garcia has the ability  
4 to make those decisions and make good decisions. And I think  
5 those do affect the staff, the public. They affect all our  
6 safety.

7 And I don't see how someone could make those  
8 decisions and dismiss it with the stroke of a pen in ICC, where  
9 they could just write, "dismissed".

10 Of course, the record disappears. There's no more  
11 record of the incident because it's not placed in the inmate's  
12 file; it's not forwarded anywhere. It goes away.

13 SENATOR BEVERLY: Let's hear from Ms. Garcia on this  
14 issue.

15 MS. GARCIA: Yes. The issue doesn't go away. If a  
16 115 is in fact dismissed, there is a 128-G chrono that is  
17 documented, and the results of this committee are documented in  
18 that document. It's placed in an inmate's file forever and a  
19 day.

20 I became aware of this issue yesterday. We didn't  
21 have a name. Today we've got the name of Brown.

22 We did call the institution to see if, by chance, the  
23 inmate may still be there, but Brown is a very common name.  
24 Without any number or anything, it's kind of hard to pull up the  
25 documents.

26 However, I don't recall this instance. And Mr.  
27 Purviance is correct; these things can happen if an inmate is  
28 found with this type of explosive devices.



1 But I have no recollection, and I don't know why I  
2 would have dismissed a charge of possession of ammunition. It's  
3 beyond me that I would ever do that.

4 The classification committee is a committee --

5 SENATOR BEVERLY: Senator Lewis.

6 SENATOR LEWIS: Are you aware of the identity of this  
7 inmate?

8 MR. PURVIANCE: I recall at the time I was incensed.  
9 I wrote his name down; I wrote his number down in my notebook.

10 Like I said in the report, it was somewhere in the  
11 fall of '92. I couldn't even give you a date, because I don't  
12 have the book.

13 I remember Inmate Brown pretty well, because  
14 sometimes when you work closely with the inmates, you have to  
15 talk to them over a period of time, especially in Administrative  
16 Segregation. And he lived in Cell 126; it was right next to the  
17 shower.

18 I really don't have any other identifying thing that  
19 I could name about him.

20 SENATOR LEWIS: When did you make this Committee, or  
21 the Committee staff, aware of this incident?

22 MR. PURVIANCE: I was asked to write a report on this  
23 I believe it was Monday.

24 SENATOR LEWIS: And you turned over the report on  
25 what date to Committee staff?

26 MR. PURVIANCE: It was Monday evening when we FAXed  
27 it.

28 SENATOR LEWIS: Thank you.



1           SENATOR BEVERLY: Senator Petris.

2           SENATOR PETRIS: Did ascertain, or did anybody, just  
3 how he got this ammunition?

4           MR. PURVIANCE: That was part of what came down in  
5 ICC.

6           As far as a true ascertaining of what happened, all  
7 we ever got was what the inmate said had happened. He said that  
8 being at camp, they go on fire line, and they find things on the  
9 fire line where they go out and they fight the fires.

10          The practice for that is to come back and turn it  
11 into correctional staff. Anything, when you're coming off the  
12 fire line, that you have that you know is dangerous contraband,  
13 you turn into correctional staff.

14          I recall at the time discussing the case with  
15 Counselor Lewis at work, that there had been a several week  
16 period go by since this particular camp had been out on a fire.  
17 And the inmate's story in the committee was that he had  
18 forgotten to turn it in. And it just got mixed up in his  
19 property.

20          And I found it even then and even now very difficult  
21 to believe that an inmate would be in possession of ammunition  
22 and forget he had it.

23          SENATOR PETRIS: Maybe he thought it was a postage  
24 stamp.

25          How many rounds?

26          MR. PURVIANCE: I can't recall specifically if there  
27 was two or three. I know there was more than one.

28          I tried to call the officer that wrote it, who was





1 Officer Gordon at Base Line Camp, and he remember the incident,  
2 and he couldn't help me with any more specifics, a name and a  
3 number and stuff.

4 MR. TRISTAN: Mr. Chairman, my name is David Tristan.  
5 I'm the Deputy Director for Institutions Division.

6 We just found the chronos on Inmate Brown. His E-  
7 number is 97376. They're going to be FAXing the information to  
8 my office, and we'll get it to the Committee.

9 On January 2nd, '92, the committee of which Rosie  
10 Garcia was not a part of, because the chrono indicates who the  
11 committee members were and who the chairperson was, assessed a  
12 181-day credit loss and a Security Housing Unit term.

13 On January 30th of that same year, he went back to  
14 committee, and the committee upheld that credit loss and SHU  
15 term.

16 In February 27th, the CSR who endorses all of the  
17 committee actions and the transfers between institutions --  
18 because wardens have no control of transfers of inmates between  
19 institutions; it's controlled out of my office in Headquarters  
20 -- confirmed the 181-day credit loss, but declined to send the  
21 inmate to the Security Housing Unit.

22 Ms. Garcia, according to all of the written  
23 documentation that we have, was not involved in any of the  
24 decision making on Inmate Brown.

25 SENATOR BEVERLY: All right, thank you.

26 If you receive those documents, please forward them  
27 to the Committee.

28 Senator Petris.



1           SENATOR PETRIS: It's the same old thing, a conflict  
2 of the facts.

3           I understand they're dumping all this on Ms. Garcia.  
4 Now the head of the unit there says she wasn't there present;  
5 she didn't participate. And she says she doesn't remember that  
6 incident at all.

7           I don't know why there's such a disparity between the  
8 two sides on who was where.

9           Are you contending that she was present at this  
10 committee meeting?

11          MR. PURVIANCE: I didn't even get a job change into  
12 Segregation Unit until March or April of that year. I wasn't  
13 there in January, or whenever this Mr. Brown was, the E Number  
14 97376.

15          I said I don't recall what his CDC number was, but I  
16 know that we also had another incident where an inmate had  
17 escaped from Base Line and went down to Copperopolis, and there  
18 was also ammunition involved in that one when he took some from  
19 a house. And I don't know if it's that Mr. Brown or a different  
20 Mr. Brown that we're speaking of.

21          I know that I couldn't speak to anything that  
22 happened to Segregation Unit in the committee in January of that  
23 year, because I wasn't assigned to that unit. But I know what  
24 happened later in the fall.

25          SENATOR PETRIS: You were on the committee later?

26          MR. PURVIANCE: I was an escort officer for the  
27 committee during the fall of that year.

28          SENATOR PETRIS: Was this incident discussed in the



1 fall?

2 MR. PURVIANCE: Yes, it was. The incident was  
3 discussed in the fall of that year, and it was an initial  
4 affirmation of credit loss, which would have been the  
5 committee's decision whether to dismiss it, uphold it, or send  
6 it back with some variance of penalty.

7 SENATOR PETRIS: So this 181-day removal of credit,  
8 whatever it's called, was the overruled by Ms. Garcia?

9 MR. PURVIANCE: I can't speak to that case in  
10 particular because I wasn't the escorting officer at the time.

11 What I'm trying to tell this Committee is that it's a  
12 different inmate.

13 SENATOR PETRIS: Oh, I see. Maybe we can call Mr.  
14 Brown in and ask him, all 24 Mr. Browns.

15 [Laughter.]

16 MR. PURVIANCE: All 50 of them.

17 SENATOR BEVERLY: Who's the next witness?

18 MR. NOVEY: Senator Beverly, Don Novey.

19 I'd like to do a summation here so we can get down  
20 the road.

21 I humbly appreciate your patience here. I think this  
22 is a testing grounds for Senator Lewis, probably, his first time  
23 out.

24 I think Louis Brandeis probably put it best, and I'd  
25 like to paraphrase. You know, that light creates growth.  
26 Unfortunately, as Senator Petris so aptly put it, we have some  
27 problems here in reference to credibility.

28 I'd like to correct a statement that was made the





1 other day. I went back and checked our records since 1980, and  
2 I've been President of this fortuitous organization since that  
3 date, we've opposed three individuals for warden, for everyone's  
4 edification.

5 Now, Ms. Garcia most recently stated, Monday, that  
6 she was in charge of Segregation at Pelican Bay. There's three  
7 issues I have placed before you today. They're late, and I'm  
8 not going to discuss those issues. I think the Senators should  
9 review them themselves.

10 Judge Thelton Henderson just ruled on his decision  
11 Tuesday night, and there's some problems we have at that  
12 facility and we've had historically.

13 SENATOR PETRIS: Excuse me.

14 You mentioned him the other day.

15 MR. NOVEY: Yes, sir.

16 SENATOR PETRIS: He's going to rule on --

17 MR. NOVEY: He has made his ruling, sir, Tuesday  
18 night. I have it, part of that ruling before you.

19 I don't want to go into the actual issues, because I  
20 haven't had a full review of them. There's several areas in  
21 here that I've xed out for your review in dealing with  
22 Ms. Garcia's working within that facility.

23 I don't think it's right for Ms. Garcia or anyone  
24 else in this room, for me to put a denigrating attack on her  
25 without her reviewing the documentation as well. So, I feel  
26 very strongly about that.

27 Maybe you'll look through it. It has some quotes by  
28 Ms. Garcia in there, and it might give you some options in



1 reference to what her correctional attitude is.

2 SENATOR PETRIS: Do any of these refer to that  
3 decision, the court decision?

4 MR. NOVEY: Yes, sir. But I just think it's --

5 SENATOR PETRIS: Is your group pleased with the  
6 decision?

7 MR. NOVEY: I think it was somewhat bifurcated. It's  
8 the traditional split-the-baby-in-half and move on with life,  
9 sir. Federal court intervention.

10 I think they reinforced Rhoades v. Chapman, '81, that  
11 the state can run their facilities, but there are 8th and 14th  
12 Amendment violations that they're strongly concerned about. And  
13 I think the Director will be addressing those.

14 But reference to that era when Ms. Garcia was in  
15 charge of Segregation, I think, you ought to review for your  
16 own, and I'm not here to attack Ms. Garcia without her reviewing  
17 the documentation, too. I think it's the only right way to do  
18 that.

19 I'd just like to sum up and get off the podium here,  
20 and then you render your decision.

21 In summation, we think it's less than professional to  
22 re-open a facility after an officer's had their face or throat  
23 slashed. I've been in this business for 25 years. I've never  
24 been around it where, immediately, within that 24-hour period,  
25 where you re-open a facility.

26 The thing concerning the ammunition, whether it was a  
27 cartridge under a trash can or Rem fire at Sierra, the one thing  
28 that I'm sensitized, and true professionals in this field are,



1 that the pop of the zip can kill an officer, and it has in the  
2 past. I'm quite sensitized to those areas.

3 And I think that, being in this business for 25  
4 years, there's some difficulty, at least from my perspective,  
5 why things weren't acted on more quickly.

6 I address those issues. I am a former watch  
7 commander, however short it was. But in my lifetime in this  
8 profession, I've always admired the management team that could  
9 operate independently and quickly of Central Office on crisis  
10 type scenarios.

11 The asbestos, the key we're all missing here is that  
12 the complaint was registered early on. All the management team  
13 -- this is a test of morale here, darn it -- all the management  
14 team had to do was move that staff area. That was the request.  
15 And I don't think anything would have been further.

16 And it went beyond that. You had every union in that  
17 institution. I know for the good conservatives in here, that  
18 might not mean a lot, but let's bifurcate the issue again.

19 The concern of the line were paramount. And I  
20 personally went out and walked that picket line, and very rarely  
21 do I do. Very rarely do I even get the chance to testify in  
22 front of this august Committee.

23 But there's something wrong here.

24 If you want to confirm Ms. Garcia, I will guarantee  
25 you, our men and women will work with the lady. We're not going  
26 to be failing from that end, because we cannot afford to have a  
27 5,000-bed prison go down. By approving this person today, we're  
28 taking that chance.





1           These massive facilities are unparalleled. Ms.  
2 Garcia could probably run a facility of a larger -- I mean a  
3 smaller magnitude, probably.

4           I, as representing these men and women, cannot take  
5 that chance from my position, nor can these other individuals in  
6 this organization, of having a less than competent individual  
7 secure the facility. And we've had several indications of that  
8 here today and as of Monday.

9           And there's repeated statements throughout this  
10 process, and humbly, Senator Petris, I feel bad about it because  
11 there's things back and forth, and you have to make the ultimate  
12 decision and refer it to the Senate Floor.

13           I feel bad about the facts not being totally right in  
14 one way or another, and we've had more difficult hearings in  
15 reference to the field of corrections. You're fully cognizant  
16 of that, sir, probably more so than anyone in this room.

17           But when are we going to make a final decision that  
18 it's a tough job for a Director to determine what a warden  
19 should be? We don't even have a command college, and maybe  
20 that's another recommendation I'd like to move, that we need a  
21 command college in this profession.

22           I don't want to build, and neither does anyone else  
23 in this room, more prisons than we have universities, darn it.  
24 I think we'd go in the wrong direction, and we've got to bring  
25 these things to a halt.

26           But to have management, with its obfuscation, and  
27 unfortunately this infantry [sic] towards our institutional  
28 setting, we have no other choice but to oppose Ms. Garcia for



1 confirmation.

2 And it hurts me. It hurts anybody to attack a fellow  
3 human being, but this is from a professional sense and not a  
4 personal sense.

5 I strongly urge this Committee to review how she's  
6 handled her command presence. And Senator Ayala, and Senator  
7 Beverly, and I know Senator Petris has been in the big war,  
8 before World War II, or was it World War II, sir?

9 SENATOR PETRIS: World War I in my case.

10 [Laughter.]

11 MR. NOVEY: I know you were in Greece, saving the  
12 entourage of the commies coming from the other side.

13 But that's what this boils down to in reference to  
14 our position. It has nothing to do personally with Ms. Garcia.  
15 She's probably a competent manager in many areas, but command  
16 presence on the line -- and this is the toughest job for any  
17 administrator to handle.

18 We've had some good Hispanic female warden candidates  
19 pass this Committee. We've never opposed them.

20 I'm receiving this message from five chapters of this  
21 organization, not just three; five. That's unparalleled and  
22 unheard of in our organization.

23 However you vote, I still wish Ms. Garcia well in her  
24 future endeavors in the field of corrections.

25 SENATOR BEVERLY: Thank you.

26 Let me inquire, is there anyone else who wishes to  
27 testify in opposition? You had your hand up. Do you want to  
28 testify?



1 MR. LOZANO [FROM THE AUDIENCE]: The problem with it  
2 is, on Tuesday, as you may know, there was many people who  
3 wanted to testify but because of the time, those that were in  
4 support of it did not have that opportunity.

5 I hope we're not going to be running out of time now.  
6 I still would like to be able to testify in support.

7 SENATOR BEVERLY: How many wish to testify today, one  
8 way or the other? Just the two.

9 All right, you come forward, then we'll give Ms.  
10 Garcia a chance to make any comments she wishes, and then we'll  
11 see what the Committee wants to do.

12 MR. LOZANO: Mr. Chairman, Members of this Committee,  
13 my name is Hector Lozano. For the record, the spelling is  
14 L-o-z-a-n-o. I'm a Correctional Counselor II at the Sierra  
15 Conservation Center.

16 I've been a dues-paying member, active, in the  
17 California Correctional Peace Officers Association for 13 years.

18 I have to say that I'm somewhat bothered by the  
19 process as I've seen it happen here over the last two days,  
20 because there's something to be said for accuracy of testimony.  
21 And I can appreciate Senator Petris's comments about things  
22 don't seem to jive.

23 Well, I can assure you, they don't jive.

24 The notion that CCPOA represents 20-plus thousand  
25 members is certainly a true one; however, at the bargaining  
26 table, not in front of you today.

27 The notion that Mr. Coke and Mr. Purviance represent  
28 employees at SCC, to be exact there are 726 CCPOA members, I





1 think is also not correct. There was reference made to 100  
2 people participating in an informational picket. That's  
3 approximately one-seventh of what is -- of the membership.

4 I don't recall at any one time that we raised our  
5 hand or signed a ballot, marked a ballot, in terms of who we'd  
6 support for warden or not support. I think that working at  
7 Sierra Conservation Center for 10 years, I have a very good  
8 gauge as to what morale is like; I have a very good gauge as to  
9 what sentiments are like; I have a very good gauge as to how it  
10 is to work with different administrative staff.

11 I've been there, and there've been approximately five  
12 or six wardens since I've been there. For whatever reason,  
13 Ms. Garcia seemed to be the target of what I regard as some  
14 personality clashes.

15 However, not to dwell on that, I want to go ahead and  
16 dwell on some positive things that I've been able to experience  
17 while working for Ms. Garcia.

18 Ms. Garcia's presence, first of all, is still felt at  
19 Sierra Conservation Center, and I say that because I had an  
20 instance where I did not have faith in the administration or the  
21 administrative process, particularly equal employment  
22 opportunity process: how complaints were dealt with, those  
23 types of discrimination matters. And I shared those with  
24 Ms. Garcia upon her arrival, and Ms. Garcia informed me that,  
25 while she may also see that things don't always work the way we  
26 want to, to not get involved to make the place a better place to  
27 work is tantamount to complaining about our government, and then  
28 not going to the polls.



1           So, she encouraged me to get involved and to make my  
2 contribution, and I did that. As a result, I've seen some  
3 significant turn-around, not so much in the way things happen to  
4 come out many times, but I think a heightened understanding of  
5 what takes place.

6           I've been able to share those thoughts and been able  
7 to mention Ms. Garcia by name to others that have had the same  
8 feeling, and we've been able to see a turn-around in their  
9 attitudes as well. It has been very positive, and I think this  
10 is the presence that I talked about that still exists at SCC on  
11 account of Ms. Garcia.

12           Let me also mention, I'm also a member of CCWA,  
13 Chicano Correctional Workers Association. Throughout the  
14 hearings, I've been hearing -- I've been listening to references  
15 about Ms. Garcia being a Hispanic, being a female, both from  
16 those who testified as well as some of the Legislators.

17           With all due respect, I somewhat resent that notion  
18 that we are here today because she is a Hispanic or because she  
19 is a female. It is unfortunate that we're not looking at her  
20 in terms of her career. She has a very distinguished career of  
21 18-plus years. She is an accomplished administrator that I've  
22 been able to judge first-hand. She is very capable; she is very  
23 thoughtful. She is compassionate; she is fair.

24           It's disturbing to see the process occur as it has  
25 been over the last few days and not be able to come up here and  
26 tell you that I've worked there, I've been there, and I know  
27 Rosie personally. And not because I know her personally, but I  
28 know what she is capable of doing.



1           It is truly unfortunate that you would have some  
2 other members of other unions come here and tell you that they  
3 represent this massive number of the majority, when in fact they  
4 actually represent a minority of those people at those  
5 facilities. They may represent them at the bargaining table for  
6 salary and benefits and so forth, but certainly they do not  
7 represent the sentiment of those employees at those facilities,  
8 at least not all employees.

9           I just want to make it clear that it is more over the  
10 leadership that opposes Ms. Garcia as opposed to all the rank  
11 and file, and I think it's important to point that out.

12           I have no more comments, but I am willing to answer  
13 any questions.

14           SENATOR BEVERLY: You shouldn't be disturbed. You're  
15 having your opportunity to testify now.

16           MR. LOZANO: Well, I think what I was disturbed by, I  
17 was disturbed by the way things happened to work. I think what  
18 I'm disturbed by, Senator, is that you had many employees here  
19 on Tuesday that would have been able to provide similar  
20 testimony, that worked directly for Ms. Garcia, who were not  
21 able to do that.

22           What you did have, on the other hand, is, you had a  
23 handful of individuals that were able to, if you will, clobber  
24 Rosie and not -- and equal time was not provided those many,  
25 great many, people who were here did not have that opportunity.  
26 I think that's what I mean by disturbing.

27           SENATOR BEVERLY: We also had a lot of written  
28 communication primarily in support, as I recall.





1 Is there one other witness?

2 MR. RODRIGUEZ: Good afternoon, gentlemen. My name  
3 is Martin Rodriguez. I am a correctional officer. I am  
4 personally working at Centinela. I am one of the employees who  
5 did come back to show 100 percent support for Ms. Garcia.

6 I can't say any much because this gentleman here has  
7 said it all. I can't dispute his positions.

8 However, the only thing I have to say is that I am  
9 also a member of the California Peace Officers Association, and  
10 I definitely don't share the same views.

11 SENATOR BEVERLY: Thank you very much.

12 Ms. Garcia, would you like to close with any  
13 comments?

14 MS. GARCIA: Sure.

15 I'd just like to say that it's not easy being a  
16 warden. There is no instructions that come with being a warden  
17 and running an institution and handling incidents.

18 But I'm a participatory type of a manager, where I  
19 solicit input from my management staff, my supervisory, as well  
20 as line staff. As such, I feel that the decisions that I have  
21 made are the right ones. I do the right thing for the right  
22 reasons.

23 I have led -- I have trained and led staff through my  
24 career, through the war zones of Soledad and San Quentin, and  
25 done so effectively.

26 I feel that I am an effective Warden and will  
27 continue to be one, and I thank you for this opportunity.

28 SENATOR BEVERLY: Thank you.



1 Any further questions of the witness?

2 That concludes the hearing. I don't know what the  
3 Chairman's pleasure is.

4 Senator Ayala.

5 SENATOR AYALA: I just want to say that I agree with  
6 Senator Petris. The testimony has been so contradictory. I  
7 don't know why she's such a lightning rod to the CCPOA, but it  
8 appears to me that everything was rebutted to my satisfaction.

9 Still, negative things keep coming up, and good  
10 things keep coming, so I am really confused about this issue.

11 SENATOR BEVERLY: I'm prepared to act. I don't know  
12 what the wishes of the Committee are.

13 Historically, if any one Member wants to hold it  
14 over, we do so.

15 SENATOR AYALA: I'd like to move that Ms. Garcia be  
16 confirmed for the position of Warden of Centinela.

17 SENATOR BEVERLY: We have the motion recommending  
18 the Committee confirm. Any comment?

19 Secretary will call the roll.

20 SECRETARY WEBB: Senator Ayala.

21 SENATOR AYALA: Aye.

22 SECRETARY WEBB: Ayala Aye. Senator Lewis.

23 SENATOR LEWIS: Aye.

24 SECRETARY WEBB: Lewis Aye. Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Petris Aye. Senator Beverly.

27 SENATOR BEVERLY: Aye.

28 SECRETARY WEBB: Beverly Aye. Senator Lockyer.



1 Four to zero.

2 SENATOR BEVERLY: Let's leave the roll open if  
3 Senator Lockyer wants to vote.

4 Thank you all for your participation.

5 [Thereupon the final vote for  
6 confirmation was 4-1, as Senator  
7 Lockyer's no vote was added  
8 pursuant to Senate Rule 28.7]

9  
10 [Thereupon this portion of the  
11 Senate Rules Committee hearing  
12 was terminated at approximately  
13 3:37 P.M.]

14 --oo0oo--  
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I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

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APPEARANCES

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SENATOR WILLIAM LOCKYER, Chair

SENATOR ROBERT BEVERLY, Vice Chair

SENATOR RUBEN AYALA

SENATOR JOHN LEWIS

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Governor's Appointments

ALSO PRESENT

SANFORD C. SIGOLOFF, Member  
State Board of Education

STEVEN G. BAKER, Member  
Board of Prison Terms

GINA S. BERRY, Director and Staff Attorney  
Prisoners' Rights Union

KAREN STEWART  
Concerned Citizen

RHODA RODGER  
Concerned Citizens for Prisoners

CARAL A. HINES, Self  
JDL Legal Services

KELLY RUDIGER, Executive Director  
Doris Tate Crime Victims Bureau

ROBERT N. RUGGLES, Commissioner  
Workers' Compensation Appeals Board

WILBERT L. SMITH, Ph.D., Member  
Board of Governors  
California Community Colleges



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## P-R-O-C-E-E-D-I-N-G-S

--oo0oo--

CHAIRMAN LOCKYER: We want to go on to Item Number Three in your file on confirmations. Mr. Sigoloff is the first question before us.

Good afternoon, sir.

MR. SIGOLOFF: How do you do.

CHAIRMAN LOCKYER: If you'll take a seat, if you wish to begin with any kind of opening statement, we always invite that.

There probably are numerous questions from Members, but it would be appropriate if you wish to.

MR. SIGOLOFF: This is my first experience in this process, so I'm here to serve you.

I note that there were some letters of objection. I'm pleased to answer those in my behalf when the occasion arises.

CHAIRMAN LOCKYER: Sir, at some point, after whatever comment you would wish and questions are posed, we'll ask for support and opposition testimony, and then give you an opportunity to comment or respond to anything said.

MR. SIGOLOFF: I'm here.

CHAIRMAN LOCKYER: Anything that you want to start with?

MR. SIGOLOFF: No. I welcome the opportunity to be here.

CHAIRMAN LOCKYER: If you would, perhaps, begin with some comment about the challenges facing education in



1 California. I know you did extensive work a year or two ago to  
2 prepare yourself to be a knowledgeable person in that policy  
3 domain.

4 What are your conclusions and thoughts about what we  
5 need to do in California?

6 MR. SIGOLOFF: Well, first of all, as your record  
7 shows, my most recent experience in education is as a professor  
8 at UCLA.

9 When the Governor asked me to consider the interim  
10 position of Superintendent of Public Education, I agreed to do  
11 that if I had a period of time to do my own due diligence. And  
12 I had the opportunity to talk with many of the Members of the  
13 Senate and the Assembly, spend time in the field, a lot of time  
14 with Arthur Anderson and their School of the Future, Frank  
15 Newman, Rand Corporation, teachers in general, PTA, and LEARN.  
16 And made a fairly well-rounded view of what both Senators and  
17 Assembly thought was going on, and at the same time, what  
18 teachers thought was going on. A lot of time with the  
19 Governor's budget people in terms of the deficit funding, and  
20 spent time with material publicly available from Mr. Riley's  
21 office.

22 And my general conclusion, which I reported back to  
23 the Governor, is that, as in many instances, change is  
24 necessary; it was a question of how. And to what degree could  
25 the state afford the change.

26 And I should add to my opening statement that I did  
27 have the opportunity to meet with various teacher unions.

28 The impression that I had was that the state had gone





1 through a very, very blissful period of highly educated people  
2 who had moved its economy along very well. The Summit, I think,  
3 properly presented the problems of the future in terms of the  
4 shortage of schools, and the demographic changes of the  
5 population, and also the urgency to keep up with technology.

6 So, I think I started my journey to this meeting with  
7 you as prepared as I could be, recognizing that I am not  
8 unemployed; that I am on a number of boards, and that I teach  
9 full-time at UCLA, plus run my own business.

10 I believe, in direct answer to your question, a  
11 certain sense of urgency for the kind of thing that is in  
12 motion. I'm delighted to see that Delaine has that same view,  
13 and I'm concerned that we get into lock-step from the Department  
14 of Education with the State Board and the people who pass the  
15 laws to make sure we can make some rather rapid progress in the  
16 next five years.

17 CHAIRMAN LOCKYER: You mentioned three areas. Just  
18 to draw you out a little bit more, the shortage of schools, the  
19 change in technology, and diversity.

20 What do we do to try to make more schools? How do we  
21 do that?

22 MR. SIGOLOFF: I'd probably suggest to you that since  
23 the general obligation bonds didn't pass, there must be some  
24 misunderstanding between the people who vote and the goals of  
25 the people here in Sacramento, or a sense of distrust, or a lack  
26 of organization or points.

27 Clearly, without that money, we're not going to build  
28 900 new schools, and we're not going to deal with the population



1 density as presented to us by the Summit.

2 Secondly, I think there is a lot of urgency in  
3 recognizing the relationship between the parents and the  
4 teacher, the arrival of the charter school and its perspective  
5 change, and the potential of the return of "Son of Voucher" and  
6 its impact on the ability to choose how your child gets  
7 educated.

8 And there's also the need for the teacher to have  
9 more freedom to do what he or she needs to do, which means  
10 somewhat automate the school system, which really hasn't been  
11 automated in perhaps 30 to 50 years.

12 So, I think it's a broad spectrum. It's a question  
13 of priority and who sets it. It's also a question of funding.  
14 It's also a question of new laws.

15 CHAIRMAN LOCKYER: That's with respect to the school  
16 shortage problem or broader?

17 MR. SIGOLOFF: I think the general question is how do  
18 you deliver quality education as expected by the citizens of  
19 California.

20 I can't speak to the issue of school shortages, other  
21 than have been enumerated, and you don't build them without  
22 money. So, somehow along the line, there has to be some  
23 appropriation mechanism that's satisfactory to the public.

24 CHAIRMAN LOCKYER: What do you mean by the failure to  
25 automate? How would a school look if you did automate?

26 MR. SIGOLOFF: Well, you know, American industry is  
27 in the position it's in today because of changes. It recognizes  
28 the ability to change, and it has the desire to change.



1           The technology is exponential at this time. Not all  
2 of our schools are even equipped for computers. Or let's call  
3 it personal assistance, record keeping, communication on whether  
4 students are present or not present, emergency actions. A  
5 number of activities that require school administrative time can  
6 be automated, and many schools are attempting to do that within  
7 a very limited budget and some cases, no computers.

8           The second issue, of course, is the revolution in  
9 education is changing dramatically the need for textbooks and  
10 textbook updating. They may well be CD ROMs, or they may be  
11 read off of computer disks.

12           Most of the schools that I visited were not wired for  
13 anything. And those schools that were, were perhaps two or  
14 three years behind the technology of group education.

15           That is not to suggest that what is being delivered  
16 is inadequate. It's a question of whether that delivery system  
17 will be effective in five to eight years.

18           CHAIRMAN LOCKYER: How would you address the  
19 challenges of diversity in our educational system?

20           MR. SIGOLOFF: If you're speaking to the issue of a  
21 single language in education, or just the issue of opportunism  
22 for a common basis?

23           CHAIRMAN LOCKYER: Both.

24           MR. SIGOLOFF: We had a very excellent discussion on  
25 the ability to have English taught to people who did not have an  
26 understanding of a second language. Presentations made to the  
27 Board at the last meeting last week were outstanding, and the  
28 continuity between knowing a mother tongue language and the





1 ability to make transpositions.

2           So, I think there's a lot of basic research going on  
3 as to the methodology of teaching one or 90 variant languages we  
4 have in school systems. I think the material presented to us  
5 suggests that if you're fluent in the mother tongue, you have a  
6 higher priority of transliteration into English, and a higher  
7 priority for education in a second language than if you didn't.  
8 So, that puts some stress on the home and its ability to teach  
9 the fundamentals of the mother language, and secondly, to the  
10 school system to recognize that type of teaching.

11           Getting technology, technology requires an integrated  
12 effort from curriculum and development, and disposition,  
13 education, and retraining of teachers, to a cost of keeping up  
14 with that kind of activity. There, I think, there has to be a  
15 very strong push within the system for funding that, even if  
16 it's on an experimental basis.

17           CHAIRMAN LOCKYER: Separate from the language  
18 question, just your general thoughts about the tensions and  
19 consequences of racial and ethnic diversity in our state, which  
20 is a growing phenomenon. What's the appropriate role for  
21 schools and educational leaders to help address those problems?

22           MR. SIGOLOFF: Well, I don't think it's a new  
23 phenomena for our era. During the Second World War, my father  
24 was major in the Medical Corps and I lived in the south. The  
25 south had all kinds of fractionation, and probably one of the  
26 lowest forms of fractionation was to be white Army trash.

27           But if educational opportunities are made available,  
28 of there is a thrust by the parents --



1 CHAIRMAN LOCKYER: You were an officer's son.

2 MR. SIGOLOFF: My father was an officer, and I was an  
3 officer in the Korean War.

4 But the question that you've asked me to address is:  
5 can it be done? I think the answer is yes, it can be done, but  
6 it's a relationship between a community that wants an educated  
7 population, the capacity of the teacher to reach out to the  
8 parent, and the ability for the school system to design programs  
9 from K through 12 or 14 that will make a better functioning  
10 citizen in our community.

11 And obviously, we all know we have gangs and we have  
12 inner cities, but most people basically believe in the American  
13 dream and want an education. And it's our responsibility, I  
14 believe, to make sure they get a chance for it.

15 CHAIRMAN LOCKYER: I've got it started here. Now,  
16 jump in any time, friends. Senator Ayala.

17 SENATOR AYALA: I have a couple questions for the  
18 gentleman here.

19 Were you present at a recent meeting when the new  
20 Superintendent of Instruction requested that she be allowed to  
21 hire her staff, and you people refused to give her that  
22 authority?

23 MR. SIGOLOFF: Let me speak to what I think your  
24 question is.

25 There was a meeting of the State Board last week.  
26 Prior to that time, the issue of the new appointees came up, and  
27 the authority for those appointees as viewed by the Board,  
28 interpreting the legal actions that had occurred with the prior



1 Superintendent.

2           There was an intense discussion on that and  
3 interpretation, and I think the resolution was met for both  
4 sides that, if the State Board agreed to having a personnel  
5 committee, that it would be possible for that committee to work  
6 with Ms. Eastin to give her both the opportunity to select those  
7 people who needed review and those that did not need review, and  
8 at the same time, make sure that she had the opportunity to make  
9 a full evaluation of all the people who were resident there, and  
10 had the authority to change them as she saw fit.

11           I can't answer your question any more directly than  
12 that, because I arrived at about 10:00 o'clock, after the closed  
13 session meeting, and that could have been brought up in the  
14 closed session meeting.

15           SENATOR AYALA: But your understanding is that the  
16 rationale for refusing to allow the new Superintendent of  
17 Instruction to select her staff was that you wanted her to  
18 evaluate the existing staff?

19           MR. SIGOLOFF: No, no. I perhaps have not been  
20 clear.

21           The precedent discussion that dealt with her four  
22 appointees and her other staff was something that occurred  
23 before I attended the meeting.

24           The resolution of how to deal with that was to be  
25 cooperative with her on her recommendation, and also to  
26 encourage her to review those people who were in residence when  
27 she took office.

28           It's my understanding that she will be making





1 recommendations, I think, through the personnel committee to the  
2 State Board on what I would call friendly terms.

3 SENATOR AYALA: Will she allowed to select her top  
4 staff without the Board interfering with that?

5 MR. SIGOLOFF: Well, I can't speak for the Board.

6 SENATOR AYALA: For yourself.

7 MR. SIGOLOFF: She's a duly elected officer --

8 SENATOR AYALA: That's right.

9 MR. SIGOLOFF: -- who, by my definition of corporate  
10 law, is the CEO. And her job is to provide support personnel  
11 for her who will do the job that she's empowered and responsible  
12 to do.

13 And I hope that will be one that everybody is very  
14 pleased with and proud of as her first term is over.

15 SENATOR AYALA: I'm not sure you answered my  
16 question. Will you allow her to select her staff?

17 MR. SIGOLOFF: If you're asking me as a potential  
18 member, the answer is of course.

19 SENATOR AYALA: I would hope so. She's elected by  
20 the people, and you folks are appointed by the Governor and you  
21 have to support his philosophy, and he didn't run for  
22 Superintendent of Instruction. She did.

23 MR. SIGOLOFF: I'd like to --

24 SENATOR AYALA: So, I don't know how you people get  
25 off telling her how to run her office.

26 MR. SIGOLOFF: -- to not be difficult, but I think  
27 when you serve the people of the State of California, you serve  
28 them by virtue of your independence.



1 I come from a business background. I teach the  
2 subject. I've run many large corporations.

3 And she is the CEO by my standards. And she has a  
4 very difficult job to do for the people of the State of  
5 California.

6 And by my standards, she should pick her staff. And  
7 if that is an ingredient of your question, I will support her in  
8 picking her staff.

9 CHAIRMAN LOCKYER: On this point, just for purposes  
10 of clarification, the law, whether it be constitutional or  
11 statutory, seems to be unduly complicated with respect to the  
12 staffing. And there are sort of two groups of staff.

13 MR. SIGOLOFF: Yes, there are.

14 CHAIRMAN LOCKYER: It's unclear, arguably clear, that  
15 group number one has to get appointed before group number two,  
16 and that Delaine had started with group number two and was told  
17 no, no, you need to go back to one.

18 Anyhow, we may share some of the blame in that maybe  
19 this was written long before any of us were here, except for  
20 Senator Petris, but there is a difficulty in interpreting the  
21 law.

22 I spoke with the Superintendent this morning, and she  
23 continued to be in a positive, let's continue to work together,  
24 sort of approach to things, and explained that she's had some  
25 discussions recently with the Governor's Office, trying to sort  
26 this matter out.

27 I'm sorry. I know you had another question.

28 SENATOR AYALA: I just had the question, what was



1 your position on the voucher system for public schools?

2 MR. SIGOLOFF: Well, are you asking me which way I  
3 voted, or are you asking me why --

4 SENATOR AYALA: What is your position? I don't care  
5 how you voted, but what was your position?

6 MR. SIGOLOFF: Well, I think the answer to your  
7 question, you have to back up and let me offer you my  
8 understanding of why we had a voucher recommendation to the  
9 public.

10 It was out of frustration for the educational  
11 delivery system, and leaving out enrichment of Catholic and  
12 private schools as an issue, I think it was an attempt by  
13 leadership and parents to get the best shot for the best  
14 education for their children that they could get.

15 And if you accept it in that light, without any of  
16 the political overtures that have been put on it, I understand  
17 that frustration.

18 I think that is a message for all people in education  
19 to recognize why that frustration occurred, and what can we do  
20 to remedy it. And I think if we're not proactive enough on all  
21 fronts, you could expect "Son of Voucher" to arrive again with  
22 more refinements, and the major refinement being for people of  
23 modest means.

24 SENATOR AYALA: I agree that the voucher system  
25 hasn't gone away or the issue, but I think the opposition will  
26 be better prepared next time because they got an early warning  
27 of what's up ahead of them.

28 So the end result is that you supported the voucher





1 system?

2 MR. SIGOLOFF: No, I support the concept of a parent,  
3 working within the community to get the best education he or she  
4 can get for their child. And if the only alternative is some  
5 form of migration through a voucher, I can understand that  
6 frustration and I'm not against it.

7 I would like not to have that occur by remedying the  
8 issue that causes it, but if it does occur, I think it puts the  
9 appropriate pressure for change and the opportunity to remedy in  
10 front of the people who have the authority to do it.

11 SENATOR AYALA: Is it unconstitutional to support a  
12 private institution that is not public in terms of public funds  
13 going to them?

14 MR. SIGOLOFF: Well, I can't speak to the  
15 constitutionality of how the money would be transferred, and to  
16 whether a voucher could go to a private school or to a Catholic  
17 school.

18 I'm only speaking to the emotional issue of why it's  
19 there. I would have to have somebody explain the constitutional  
20 authority to me.

21 SENATOR AYALA: There are schools already that  
22 parents can send their children to today, but they're not  
23 supported by public funds. And this would have supported public  
24 funds for private schools. And that's totally against the  
25 concept of American education, in my book.

26 But anyway, you supported the voucher system.

27 MR. SIGOLOFF: I support the voucher system as I  
28 defined it for you.



1           SENATOR AYALA: Thank you.

2           CHAIRMAN LOCKYER: I guess I'd like to pursue that  
3 just a bit, and it's to try to understand not so much your  
4 analysis of the voters' mood, because we all do that, but more  
5 your own approach and philosophy.

6           I note that you mentioned that out of that  
7 frustration needs to come some remedy, or not only voters but  
8 you, yourself, might find there is -- I don't want to put words  
9 in your mouth -- but no other alternative to taking care of  
10 educational needs, other than some form of a voucher?

11          MR. SIGOLOFF: No. Let me amplify the parameters of  
12 what I think we're talking about.

13          I think the experiment of LEARN and charter schools  
14 is very exciting. And change in industry and education finance  
15 come through experimentation. And I think that experimentation  
16 will give direction and leadership if it performed as it's been  
17 described.

18          When you talk to the issue of delivering balanced  
19 education in areas of financial need or social disaster, those  
20 parents who have the desire and the force to see that their  
21 children get education are not always heard. This system is, in  
22 some parts, self-defeating. The fact that they have the  
23 strength to do that for their family, I admire.

24          And if the Governor's action which says you can move  
25 within school districts doesn't do that job, then I think the  
26 issue of choice is still an issue that has to be addressed, and  
27 maybe it's not vouchers. Maybe it's more emphasis on inner city  
28 school training, or retraining of teachers for inner schools, or



1 retraining parents for that education.

2 But the issue that I'm speaking to is, you cannot  
3 loose another generation of young people to deficit funded areas  
4 or restricted education opportunities. It's not in the best  
5 interests of this state or this country.

6 CHAIRMAN LOCKYER: Do you want to help us with a  
7 forecast? That is, knowing what you know about funding, school  
8 organization, the law, do you see another generation likely to  
9 be lost, or some different result more likely?

10 MR. SIGOLOFF: Well, as a professional crisis  
11 manager, I always look for the negatives, little torpedoes, as  
12 opposed to the positives.

13 I'm very bullish on what can be done, or I wouldn't  
14 be taking time out of my private sector life to come up here as  
15 much as I can and invest as much time as I can.

16 I think that the school delivery systems will change.  
17 I think there'll be continuous emphasis on teacher regreening  
18 and bringing more minorities into teaching.

19 I think that the Legislature, over time, will get the  
20 ability to get the ear of the public for more general obligation  
21 bonds for education and new facilities.

22 I think business will be pushing to demand an  
23 educated population, and K through 12 and 14 will not be just  
24 buzz words, but absolute mandates for our state.

25 And I think we'll have to deal with the issue of  
26 higher education costs, because we cannot essentially price  
27 ourselves out of graduate students and PhDs.

28 I'm bullish, but I think it takes a lot of effort and





1 a lot of people to push on it, and it can't be without change.  
2 And there is resistance to change. There's a great comfort in  
3 being the man in the gray flannel suit, or the woman in the gray  
4 flannel suit.

5 The State of California will not enter the 21st  
6 Century without radical change in the way that it appropriates  
7 money, the way in which it invests in its future, including  
8 infrastructure, that will put a fairly heavy burden on both the  
9 Senate and all the legislative bodies. It is a requirement for  
10 our investment for the 21st Century.

11 Am I bullish? Yes, I'm bullish.

12 Do I think it's going to be easy? No, I think it  
13 will be very difficult, because I think there is an enormous  
14 apathy to the kind of change that will be required as forecasted  
15 by the Summit that Speaker Brown put on, and the forces are  
16 there.

17 CHAIRMAN LOCKYER: It may well be a matter that's  
18 prudently left unanswered, but I find myself frustrated when I  
19 know that schools have lost 2.4 billion due to inflation in the  
20 last four years, and rather than addressing that squarely, the  
21 captain of the ship suggests that we ought to shrink the revenue  
22 base devoted to K-14 by adoption of revenue reductions.

23 And I don't expect you to answer if you don't wish to  
24 comment.

25 MR. SIGOLOFF: Let me try to dance between the rain  
26 drops.

27 I think that the educational delivery system will  
28 change over time, that we'll be able to provide quality



1 textbooks, and quality teachers, and a greater emphasis on our  
2 ability to learn and be competitive in the 21st Century.

3 It will not be done without a cost, and that cost  
4 may be restructuring or re-engineering the way in which things  
5 are done, the arrival of technology or new schools, or it may be  
6 just a recognition of emphasis as to what is critical to this  
7 state to be competitive in the 21st Century.

8 I know that if education was a business that was in  
9 trouble, you would mandate change, and you would do something  
10 about it. And if an educated population is the critical  
11 ingredient for the 21st Century, you would look at all issues,  
12 from the delivery system, to teacher qualification and  
13 regreening, to all the issues that are repugnant to bring up  
14 because somebody has to deal with them, but I think that's going  
15 to be an issue.

16 In a public corporation where survival is based on  
17 change, if you don't change, you don't survive.

18 If the State of California is going to have the  
19 quality of education that it had in the past, and the number of  
20 educated workers available to industry, it will change.

21 CHAIRMAN LOCKYER: Senator Petris, anything?

22 SENATOR PETRIS: A couple of things.

23 You've been on the Board for about a year?

24 MR. SIGOLOFF: Yes.

25 SENATOR PETRIS: I understand you've only been able  
26 to attend four meetings of the Board, or maybe three. Once  
27 source says three, the other one says four. Let's say four.

28 That seems like, you know, when they meet once a



1 month, that's twelve meetings a year. You've been there a  
2 fourth of them.

3           Wouldn't that create a problem, both with your own  
4 pursuit of the duties and the impact on the Board itself?  
5 They've had two vacancies for a long time, so it would put them  
6 close to being without a quorum on several occasions.

7           MR. SIGOLOFF: I'll be happy to go through calendar  
8 date by calendar date, but I'm not sure that serves the thrust  
9 of your question.

10           When I was asked on the Board, the calendar for that  
11 year had already been set. My calendar for the year was also  
12 set. There were some compromises possible and others that  
13 weren't. When there wasn't a compromise, I would always call in  
14 with my observations and recommendations on the actions in front  
15 of the Board, where I attended the Board in part telephonically.

16           But just to set the record straight, since it was  
17 brought up in opposition, I wasn't sworn in until February.  
18 There was an insoluble conflict on the 9th and 10th. I made the  
19 first meeting. I had to go to a dear friend's funeral for the  
20 second. Could not change two board meetings. Went to the  
21 special meeting that was called, unscheduled. Went to the  
22 Educational Summit, and couldn't resolve a teaching conflict.

23           So, although the official record of those meetings  
24 that were scheduled was four, I actually attended six, one by  
25 voice, and made all my comments for those meetings two days in  
26 advance.

27           So, and everybody knew that that schedule for the  
28 first year was not an easy one to adjust. It's more easy to





1 adjust in the second year because I had time to change board  
2 meetings. I do have some conflicts on teaching schedules that  
3 won't get changed, but I make a point to read all the material  
4 that was sent to the Board, to put my comments in writing or  
5 verbally if I didn't attend.

6 So, I'm not sure that attendance is a criteria of  
7 performance, but within the first year I think I did the best I  
8 could with the time I had.

9 SENATOR PETRIS: How does it look for the second  
10 year?

11 MR. SIGOLOFF: I teach two classes at UCLA at the  
12 graduate level, so sometimes there's a conflict in getting a  
13 substitute teacher, and there are some conflicts coming up  
14 because of multiple board meetings.

15 But the attendance should be better this year, if I'm  
16 confirmed, than last year because I'd have more time to adjust  
17 my schedule.

18 SENATOR PETRIS: One of the big issues that comes up  
19 in a lot of public agencies, schools are one of them, is  
20 contracting out.

21 MR. SIGOLOFF: Sure.

22 SENATOR PETRIS: Personally, I'm very nervous about  
23 it. I've always opposed it. Not always, it depends on the  
24 case, but most of the time I've opposed it.

25 The school employees are nervous about it.

26 MR. SIGOLOFF: Sure.

27 SENATOR PETRIS: With justification, I would think.  
28 It's deemed some kind of a threat to them, who feel they can do



1 the job, and it doesn't need to be farmed out.

2 What are your views on that?

3 MR. SIGOLOFF: Well, I'll answer you both ways.

4 It's very easy when you're new to the system to say  
5 things can be done better by the private sector than the public  
6 sector, and then there is a reverse to it, that the public  
7 sector has the better expertise.

8 I think the answer for contracting is a case by case  
9 review of performance against stated objectives, and cost  
10 against budget. And I think that is a requirement of anybody  
11 who has fiscal responsibility over spending money.

12 I must tell you in all honesty that, like everybody  
13 new, you start off in a vendetta and say: why don't we contract  
14 out food service, and why don't we contract out busing? There  
15 are many people in the State of California who do this for a  
16 living. And in a very brief interval, without any intent to  
17 reach any conclusion in those two areas, which are the only two  
18 that I looked at, they appear to be running certainly to the top  
19 quartile of industry standards and appear to be competitive.

20 So, there is a natural thrust to say: let's see if  
21 we can't get it done better by industry. But on the other hand,  
22 I'm not a believer in fixing something if it's not broken.

23 SENATOR PETRIS: So your preliminary investigation  
24 indicated it didn't need fixing.

25 MR. SIGOLOFF: Wouldn't be one of the things that I  
26 would be rushing out to do.

27 SENATOR PETRIS: Another area is charter schools.  
28 Have you reviewed how the charter school -- it's a new program.



1 We've had conflicting reports. Some people are raving about it,  
2 and others are skeptical.

3 MR. SIGOLOFF: I can't quantify for you. I'm not a  
4 student that actually, having been in the schools and looked at  
5 them as they've grown.

6 The concept, which embodies a strong relationship  
7 between parents and teachers, and the concept of change, I  
8 endorse completely.

9 I think there's a period of time before people will  
10 be asking you to raise the 100 level, the 100 school level, but  
11 I think it's a way of looking at how we have different delivery  
12 systems for the needs of the state.

13 I don't know how to quantify that. I haven't spent  
14 enough time with it, but I am excited by the fact that it  
15 appears to be a well thought out, fairly well reasoned  
16 experiment, and I hope it meets its expectations.

17 SENATOR PETRIS: I guess we'll need more time to see  
18 how it works. It's still pretty new.

19 MR. SIGOLOFF: Well, as you know, without a  
20 measurement system right now, some of it's going to be  
21 subjective.

22 CHAIRMAN LOCKYER: May I interject while you review  
23 your notes?

24 SENATOR PETRIS: Yes.

25 CHAIRMAN LOCKYER: I would start with the observation  
26 that too often, savings from privatization schemes seem to be  
27 the absence of health benefits that would run with the private  
28 employee compared to the public employee, I think, perhaps,





1 contributing to larger --

2 MR. SIGOLOFF: Sure.

3 CHAIRMAN LOCKYER: -- social problems, though  
4 temporarily, perhaps, producing a savings.

5 It might be, though, the appropriate segue into the  
6 issue of Wickes and the pension funds.

7 MR. SIGOLOFF: Sure.

8 CHAIRMAN LOCKYER: Since I know in reviewing my mail  
9 that that's at least a claim of Ming the Merciless.

10 And you don't even need to talk about that. I only  
11 mention it as part of the depiction, fairly or unfairly. And I  
12 understand the --

13 MR. SIGOLOFF: Well, you know it's comedic.

14 CHAIRMAN LOCKYER: I understand that.

15 As someone who has probably a similar sense of human  
16 that's gotten me in trouble numerous times, I understand.

17 MR. SIGOLOFF: Right.

18 CHAIRMAN LOCKYER: But the issue is a real one, or at  
19 least it is claimed to be; that is, reviewing a business wire  
20 from 1985, there's an assessment of Wickes and about 7½ million  
21 saved because of termination of pension benefits to former or  
22 current Wickes employees.

23 Could you help us understand that whole situation?

24 MR. SIGOLOFF: I read Ms. Golden's letter. It would  
25 have been instructive to me if she would have been able to tell  
26 me the subsidiary of the division, because I find the letter  
27 remarkably deficit in that manner.

28 The regulation of pensions in the United States --



1 CHAIRMAN LOCKYER: Do you remember? Maybe you can  
2 recall.

3 MR. SIGOLOFF: Oh, I can.

4 CHAIRMAN LOCKYER: You're going to tell us.

5 MR. SIGOLOFF: I will tell you, because I am positive  
6 there's two parts to the equation here that are confusing.

7 Number one, there is an inference here that Wickes  
8 essentially bought a company to raid its pension funds.

9 Under-funded and properly funded pensions funds are  
10 very strictly controlled. If you have an under-funding, as most  
11 major companies had as we went from the '85s to '90s, you had a  
12 financial obligation to fund them. If not, it was publicly  
13 reported.

14 If, on the other hand, there is a subsequent event  
15 where there is a surplus, and if actuarial data supports the  
16 fact that those fundings are adequate for that population as it  
17 ages, it is financially correct to take the surplus into the  
18 operating accounts of the company.

19 I think the party or the subsidiary in question is  
20 called Simmons. Simmons was acquired as part of a group of  
21 companies from Gulf and Western. Simmons is Simmons Mattress  
22 Company, probably a 45 or 50 year old history of making  
23 mattresses primarily to be sold through Sears and J.C. Penney.

24 They had an over-funded pension fund. That  
25 over-funded pension fund was reviewed by actuarial people and  
26 seemed to be clearly in a safety net, according to actuary data,  
27 and the money was brought into the surplus of the company. It  
28 was not raided.



1           Approximately two years later, the company was sold  
2 through an LBO. And to the best of my recollection, three years  
3 after that or four years after that, the company was resold  
4 again and partially liquidated, at which time there was a suit  
5 brought that the actuarial data was inadequate.

6           The inference here that Wickes made an acquisition to  
7 raid a pension fund is extremely naive and not founded.

8           As to the final resolution of the lawsuit, I was not  
9 the CEO at that time. The company had then been acquired by  
10 Blackstone.

11           CHAIRMAN LOCKYER: And they settled, I believe, out  
12 of court.

13           MR. SIGOLOFF: I know the history of it going to  
14 there, whatever happened, but if there was a settlement, it was  
15 on the basis of actuarial data being reviewed and changed.

16           There is a second innuendo in one of these things  
17 that is remarkable to me about my insensitivity to the working  
18 person. One concludes that I started out as the CEO of a public  
19 company and never had to work, and I appreciate that vote of  
20 confidence.

21           The issue that is missed here, and the records are  
22 very complete on this, that one of the most dramatic efforts to  
23 deal with the working class, as described by one of these  
24 letters, was in the Wickes case with a company called Aldens, a  
25 company that employed 3500 people in what is called the  
26 catalogue business.

27           If you're familiar with catalogue technology, it's  
28 sales per page.





1           This company was 50 years old, and the average age of  
2 employment there was 33 years. The company had to be closed for  
3 insolvency reasons.

4           And although I am a Fellow of the American College of  
5 Bankruptcy, of which there are 400 Fellows, I know of no other  
6 case where a debtor in possession went to a judge to take  
7 creditors' money to pay the obligations of this particular union  
8 because they were of color, they had spent their entire life  
9 working for that company, they had no opportunity in the  
10 recession to ever be reemployed, and it was a violent conflict  
11 between the unions, the creditors, and the judge voted in my  
12 favor.

13           So, when somebody suggests insensitivity to the  
14 working person, I wish they'd do a better job.

15           CHAIRMAN LOCKYER: Thank you.

16           Let me ask the question I posed when we had a brief  
17 conversation --

18           MR. SIGOLOFF: Sure.

19           CHAIRMAN LOCKYER: -- some months ago.

20           MR. SIGOLOFF: When I was migrating the halls.

21           CHAIRMAN LOCKYER: Yes, it was a different issue at  
22 the time, but still an educational one.

23           Let me ask for the information first.

24           MR. SIGOLOFF: Sure.

25           CHAIRMAN LOCKYER: In reviewing your rather extensive  
26 and impressive vita, it is clear that there was almost a decade  
27 from being a senior in college in chemistry and physics, then  
28 through the '50s, employment, being in the service, employment



1 with the AEC, I guess, in two different segments.

2 MR. SIGOLOFF: Right.

3 CHAIRMAN LOCKYER: And the moral question, I think,  
4 that's raised by that era --

5 MR. SIGOLOFF: Sure.

6 CHAIRMAN LOCKYER: -- and I don't know in any way, so  
7 I ask: is there any aspect of it we should know about that  
8 involved human guinea pig experimentation with radiation?

9 MR. SIGOLOFF: Well, I think that came up in a  
10 broader issue by Senator Hayden that included polluting the  
11 atmosphere.

12 CHAIRMAN LOCKYER: I didn't remember that section.

13 MR. SIGOLOFF: It was not only radiating people, but  
14 we did the atmosphere.

15 The issue that you're speaking to is that when I  
16 graduated from UCLA, anybody who was trained in atomic energy  
17 was nationalized during the Korean War. I was put in the Air  
18 Force as a lieutenant assigned to Air University Command on loan  
19 to Las Alamos and Oak Ridge.

20 From 1951 to 1958, I was involved in nuclear weapons  
21 design and development in the United States for testing at the  
22 Nevada Test Site and the Pacific Proving Ground.

23 And if you can turn you mind back to a period of time  
24 when we thought we were in a race for the ultimate defense of  
25 the societal issues that we call democracy, it was very  
26 important that the United States win the race for deliverable  
27 weapons, and secondly, the development and delivery of a  
28 hydrogen bomb.



1 History has suggested that there was excesses in  
2 terms of fallout. There were excesses in terms of exposure to  
3 people who were distant from the initial detonation,  
4 particularly in the South Pacific. Part of that, I think, was  
5 not understanding the forces that were being unleashed, but  
6 leaving those aside, the issue was not only to be strategically  
7 strong, but to also understand the defense population needs if  
8 the United States, under some unforeseen scenario, would be  
9 adversely effected.

10 One of the jobs that I had, which ultimately ended up  
11 with being the American delegate to the International Atomic  
12 Energy Agency, was the reconstruction of the Nagasaki-Hiroshima  
13 weapons, and the reconstruction of the two cities at the Nevada  
14 Test Site. And the rationale behind this was to determine the  
15 cause of death from primary radiation and from fallout.

16 And the fallout was particularly interesting, because  
17 it would set, then, the health standards for all the health  
18 aspects of the peaceful uses of atomic energy, and design and  
19 construction. That is, in the annals as Ichiban I and Ichiban  
20 II, which became the basis for determining the radiobiological  
21 effects of radiation for the peaceful uses of atomic energy.

22 CHAIRMAN LOCKYER: A partial redundancy, Ichiban I.

23 MR. SIGOLOFF: Yes. So, in one case it was delivery  
24 in defense; in the other, it was the education for 30 more years  
25 of peaceful use of atomic energy.

26 Did Hanford get polluted? I wasn't at Hanford. Did  
27 Oak Ridge get polluted? Could have been.

28 My job was not in those areas. It was submarine





1 defense systems and droppable nuclear weapons for the Air Force.

2 CHAIRMAN LOCKYER: Not measurement of --

3 MR. SIGOLOFF: The critical issue of efficiency was  
4 measurement, so my assignment was radiation measurement, and  
5 also working with the timing and firing people to determine  
6 yield.

7 CHAIRMAN LOCKYER: How about human --

8 MR. SIGOLOFF: There were no human experiments.

9 There were -- if you think of an atomic bomb, you  
10 always have a mental image of a house with the windows being  
11 blown out and dummies being thrown around.

12 CHAIRMAN LOCKYER: I remember those movies.

13 MR. SIGOLOFF: Those experiments were done, including  
14 the development of underground protection systems, with no  
15 animals.

16 They did have a series of experiments with rats to  
17 determine blast, blast damage. The animal experimentation, when  
18 it did occur, was by fallout, and that was by accident.

19 But the experiments in the era that I was in was  
20 blast damage, and that was done on rats.

21 CHAIRMAN LOCKYER: Well, I, just as an aside, recall  
22 as a young kid, getting up at 4:00 in the morning in Oakland to  
23 go up on top of the hill and watch, just wait for the flash, as  
24 somebody who at least before I got off the track, had desired to  
25 be an astronuclear physicist. So, I was quite excited about  
26 what was going on, but that's old news.

27 Was there any deliberate or intentional exposure of  
28 military or other personnel to your knowledge in order to



1 measure impacts of radiation?

2 MR. SIGOLOFF: Well, I was there at the test that  
3 you're talking about, which was the firing of the atom cannon.

4 Military activity, as opposed to civilian activity,  
5 was segregated. Everybody knew what radiation health and safety  
6 was all about. Everybody was monitored, wrapped up.

7 From the pictures that I've seen, and we were several  
8 miles in different directions from that, there obviously was  
9 radiation effects which appeared to be secondary by walking  
10 through radioactive fields, because primary they were  
11 underground. But you'd have to look at the military files.

12 We did the radiation measurements, and on two  
13 occasions, we were in to areas closer to Ground Zero to pick up  
14 highly classified material.

15 But I think what happened is that the amount of  
16 exposure walking around was far in excess of what anybody  
17 anticipated.

18 CHAIRMAN LOCKYER: And so your conclusion would be,  
19 no deliberate or intentional exposure --

20 MR. SIGOLOFF: No, from my side --

21 CHAIRMAN LOCKYER: -- for purposes of science.

22 MR. SIGOLOFF: No. From my side of the experiments,  
23 of course I was on the civilian side, but these fellows were in  
24 trenches, and they were basically for maneuvers. But I was not  
25 involved in that. That was strictly run by military operations.

26 Our job was to design and fire a device.

27 CHAIRMAN LOCKYER: Other questions?

28 SENATOR AYALA: I have one more question.



1           What do you think of the Governor's budget proposal  
2 to do away with the Educational Code and teacher tenure?

3           MR. SIGOLOFF: Well, I'm not a student of either, but  
4 I can understand a revisionist's view of improving the Code,  
5 which appears to be some years old and might actually be better.

6           SENATOR AYALA: Improve it rather than eliminate it?

7           MR. SIGOLOFF: I don't know that the word "eliminate"  
8 is something I can respond to.

9           In my time here, which has been a year, I've heard  
10 that it is very cumbersome, very large, and perhaps is  
11 redundant, and probably could be improved and should be  
12 improved. That's the nature of my knowledge.

13          SENATOR AYALA: Versus elimination.

14          MR. SIGOLOFF: I'm not sure that elimination is not a  
15 vector towards getting improvement. I mean, I think that would  
16 be the extreme.

17          But I think, from my vantage point, I've heard it's  
18 in need of some assistance.

19          The issue of teacher tenure, when I met with the CTA,  
20 the issue that I was concerned about was, first of all, how do  
21 we get more people interested in teaching as this generation  
22 phases out, and how do we get more minorities into teaching to  
23 balance the teaching portfolio?

24          And the second thing was, how do we balance bringing  
25 new teachers in to the requirement for regreening, which  
26 everybody needs to do, and how do you enforce that?

27          We spent a lot of time talking about it. I think  
28 there was agreement that it was an ongoing program and a need,





1 but not necessarily as to how it was done.

2 I think everybody recognizes that somebody trained X  
3 number of years ago as a specialist is in constant need of  
4 retraining to be more proficient. The question is: how do you  
5 do it, and at what particular point in time do you not need it.

6 So, I think that the teacher organizations have that  
7 responsibility, and based on my meeting with Mr. Webber and  
8 others up in Burlingame, I have the sense that they're working  
9 on that or are attempting to work on it.

10 SENATOR AYALA: Senator Petris touched on your lack  
11 of attending the sessions. One of them was apparently conducted  
12 by telephone.

13 Tell how that happens. How can you --

14 CHAIRMAN LOCKYER: We'd all like to do that.

15 SENATOR AYALA: Can I get to attend here by staying  
16 home and calling in my vote?

17 MR. SIGOLOFF: No, no, no. Senator, I don't want to  
18 leave you with the impression that was having toast and coffee  
19 with my wife while everybody was working hard.

20 It was important that some of the -- I did not attend  
21 the meeting from its beginning to its end by telephone.

22 There was a very specific issue that required  
23 discussion. It was felt that it should be done telephonically.  
24 I was not the only member who participated telephonically, but  
25 it was to cover that issue in that meeting where I felt I could  
26 make a contribution, and secondly, that I should be in  
27 attendance. But it was a readjustment of my schedule to meet  
28 another schedule because I couldn't be up here.



1           SENATOR AYALA: But that telephone conversation was  
2 recorded as part of your presentation if you had been present?  
3 I don't understand how that works. I've never heard of it, to  
4 be frank with you.

5           MR. SIGOLOFF: You'd have to ask the mechanical issue  
6 here.

7           I called into Mr. Deating and said I cannot make the  
8 meeting; that was know; here are the agenda items that I think  
9 could be before us.

10           There was a session that required a lot of  
11 discussion. It was during the CLAS period, and they  
12 telephonically hooked me into the Board, along with somebody who  
13 was also not in attendance, to discuss that one particular  
14 issue.

15           But the mechanics of how it was done, I can't help  
16 you. All I know is that I was on the phone for over an hour.

17           SENATOR AYALA: Do you get per diem for that?

18           MR. SIGOLOFF: I'll have to remember that.

19           CHAIRMAN LOCKYER: Let me inquire if there either  
20 support or opposition that would wish to come forward?

21           I want to only indicate, there are letters in the  
22 file, of course, expressing concerns, mostly from the employee  
23 organizations. And I know sometimes they like to know where  
24 we're headed before they put their neck in the noose.

25           So, with that thought in mind, I would only like to  
26 say, with the information I have, and I've spent a reasonable  
27 amount of time reviewing the documentation, given Mr. Sigoloff's  
28 responses to our questions today, I would only say while I think



1 there are grounds for apprehension, there's sufficient basis for  
2 opposition.

3 Unless there is additional information that we  
4 haven't heard, I would say that Mr. Sigoloff, you're obviously  
5 enormously bright and successful, obviously successful  
6 individual, and the only question I would have about this  
7 particular post is how comfortable you are working as a member  
8 of the Board of Directors rather than the CEO? Because you  
9 obviously have a CEO disposition, and that could be incongruous  
10 with the needs of a more corporate sort of collegiality.

11 MR. SIGOLOFF: Well, I always -- I wasn't always a  
12 CEO.

13 CHAIRMAN LOCKYER: I know, but you certainly were a  
14 lot of times.

15 MR. SIGOLOFF: And am now.

16 I think that's a very fair question, and I've tried  
17 to address it by being a very serious reader of the material  
18 that's sent to me and responding in advance on those issues.

19 I think I am best served by serving, by being  
20 identified as running a specific function. I asked for the  
21 chair of essentially the performance -- you can use the  
22 adjectives in front of it and back of it -- group, and that  
23 meant that before I wanted to chair that, I wanted to spend a  
24 lot of time with people who were in the field of change, and a  
25 lot of time with Rand and other people. And also, we never  
26 appropriated any money to do it.

27 Aside from being on the Legislative Committee and  
28 attending the other activities, I think my service would be best





1 chairing a particular group and working very strongly to meet  
2 the goals of that group, independent of doing the best I can on  
3 attendance.

4 I enjoyed the deliberations, but many of them, as you  
5 know, are procedural, which if I have the time allocation, I  
6 would tend to invest it more in the committee activity that I'm  
7 involved with.

8 CHAIRMAN LOCKYER: I note a lot of them are grants of  
9 local waivers --

10 MR. SIGOLOFF: Right.

11 CHAIRMAN LOCKYER: -- and things that somebody has to  
12 do, but they may be --

13 MR. SIGOLOFF: Not being disrespectful, they are a  
14 little tedious.

15 CHAIRMAN LOCKYER: Yes.

16 Let me ask, I was reading your rather substantial and  
17 interesting biography, and one thing that I wanted to ask about,  
18 because I didn't know what it was, had to do with numerous forms  
19 of assistance to a variety of public and private agencies: the  
20 CEO Review Task Force and Idea Audit for Controller Davis. What  
21 was that undertaking?

22 MR. SIGOLOFF: Gray Davis came to me on the eve of  
23 that job and said that he had a large body of employees. He  
24 needed to know how to communicate and motivate them. And he  
25 also wanted to know whether there was a ten-point program for  
26 his particular activities, including streamlining, and  
27 consolidating, and time management.

28 Gray and I have known each other for a long time. I



1 think he's a very dedicated and very, very respectful person of  
2 talents that he does have and doesn't have. And he said, "Will  
3 you help me?"

4 So, I put together a group of lawyers and businessmen  
5 and essentially wrote the program that he enacted, which I'm  
6 sure he will you the details of, not from a Republican  
7 standpoint or a Democratic standpoint, but for the people of the  
8 State of California. And we invested about six months working  
9 with him, writing everything, including the investment portfolio  
10 policy for the State of California.

11 It was a pleasure to work with him, but it was a  
12 citizen group.

13 CHAIRMAN LOCKYER: So that's what that group was.

14 MR. SIGOLOFF: Yes, it was basically to essentially  
15 have him reframe and restructure that job.

16 CHAIRMAN LOCKYER: Was there any particular single  
17 part of it that you recall as the most significant or  
18 interesting?

19 MR. SIGOLOFF: Investments in California part,  
20 California 100.

21 CHAIRMAN LOCKYER: Is there anyone present who would  
22 wish to make a comment at this time?

23 SENATOR PETRIS: May I just ask, your vita here is  
24 kind of overwhelming. You've done a lot of things, and you've  
25 received numerous awards. And as you point out, you've been the  
26 CEO of a lot of companies.

27 How do you spend your time now principally? Is it in  
28 the bankruptcy role that you played in the past, or just where



1 do you spend it? How would you describe your present activities  
2 or primary activities now?

3 MR. SIGOLOFF: My term as a Commissioner to the  
4 Holocaust, U.S. Holocaust Museum, ended in January, which took  
5 some burden off, and I think you're familiar with my having been  
6 appointed by President Reagan to be on the Commission to build  
7 the Museum.

8 I would say 25 percent of my time is on campus and  
9 guest lecturing, and the legal work of the Fellows of the  
10 American College of Bankruptcy.

11 SENATOR PETRIS: What are your lecture subjects? Are  
12 they business?

13 MR. SIGOLOFF: At the Business School as a professor,  
14 I teach with Professor Cochran ethics and balance sheets, which  
15 is finance, my own course in crisis management and minimalism.  
16 That takes about 25 percent of my time.

17 About 25 percent of my time are out of business  
18 activities, like the State Board, charitable organizations, and  
19 the other 25 percent is, you know, my private project time.

20 SENATOR PETRIS: What's the last one?

21 MR. SIGOLOFF: Private project time. I do a lot of  
22 pro bono work for small troubled companies, and I still run my  
23 own practice, but I basically work in the larger cases, which  
24 doesn't require as much time as the smaller cases.

25 SENATOR PETRIS: Thank you.

26 SENATOR BEVERLY: Are you ready for a motion?

27 CHAIRMAN LOCKYER: Is there anyone who wishes to  
28 comment?





1 SENATOR BEVERLY: Move we recommend confirmation.

2 CHAIRMAN LOCKYER: Could we take a recess for five  
3 minutes. I would like to return a phone call, and that would  
4 give me a chance to do that, and for everyone to make sure  
5 they've looked through their papers and notes. Thank you.

6 [Thereupon a brief recess  
7 was taken.]

8 CHAIRMAN LOCKYER: Thank you for the chance for a  
9 brief break, Members. We're all present and we'll resume.

10 We had left off with a motion by Senator Beverly.  
11 Just let me ask, any other questions from Members, comments by  
12 Members before we would proceed to a vote?

13 Hearing none, call the roll on Senator Beverly's  
14 motion.

15 SECRETARY WEBB: Senator Ayala.

16 SENATOR AYALA: Aye.

17 SECRETARY WEBB: Ayala Aye. Senator Lewis.

18 SENATOR LEWIS: Aye.

19 SECRETARY WEBB: Lewis Aye. Senator Petris.

20 SENATOR PETRIS: Aye.

21 SECRETARY WEBB: Petris Aye. Senator Beverly.

22 SENATOR BEVERLY: Aye.

23 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

24 CHAIRMAN LOCKYER: Aye.

25 SECRETARY WEBB: Lockyer Aye. Five to zero.

26 CHAIRMAN LOCKYER: Mr. Sigoloff, I guess  
27 congratulations or condolences, depending on one's perspective.

28 A variety of points of view have all expressed



1 confidence in your capacity, and intellect, and abilities, and  
2 we expect you to perform well for the public that we all serve.

3 MR. SIGOLOFF: I thank you for the vote of  
4 confidence, and my pleasure to meet you another time when you're  
5 not sitting in such official surroundings.

6 Thank you again.

7 CHAIRMAN LOCKYER: Resuming the original agenda, Item  
8 Number One is Mr. Steve Baker who has been appointed as a member  
9 of the Board of Prison Terms.

10 We didn't tell you that it's sort of every other one  
11 we turn down.

12 [Laughter.]

13 CHAIRMAN LOCKYER: Do you want to start with any  
14 comments at all?

15 MR. BAKER: I think most of you know my history.

16 CHAIRMAN LOCKYER: Let me kind of jump right to the  
17 heart of the issue.

18 There's no question of your capacity, and training,  
19 and education, and experience, and all of those things. The  
20 question that's posed by a horribly tragic event in your  
21 family's life, and one for which I personally, and I'm sure  
22 every Member of the Committee would wish to, though years later,  
23 extend our heartfelt feelings for the suffering and tragedy your  
24 family's had to deal with.

25 MR. BAKER: Thank you.

26 CHAIRMAN LOCKYER: It's horrible, but it raises the  
27 question of fairness and objectivity, and whether you're  
28 capable, with all of that emotion that probably still lives with



1 you everyday, to comport the duties of this particular job with  
2 an objective and fair attitude.

3 That's probably an impossible question to ask, but it  
4 feels like the one that needs to be addressed, in all fairness.  
5 What comments or thoughts would you have about the matter?

6 MR. BAKER: A couple of things, Senator.

7 Number one, there's certainly nobody in the prison  
8 system today that had anything to do with my case. That would  
9 be number one.

10 Number two, victims and victim survivors are the  
11 fastest growing minority in this state. And I don't think that  
12 we can say that judges that have become victims or victim  
13 survivors, or police chiefs, or Legislators, for that matter,  
14 can be eliminated from the decision making process in this state  
15 simply because they become a victim or a victim survivor.

16 Thirdly, if you know my history, you know that my son  
17 was murdered when I was on the police department for six years.  
18 I spent another 14 years on that same police department after  
19 that. I spent 8 years as an undercover police officer; I spent  
20 2 years working property crime as a detective, and 4 more years  
21 working violent crimes as a detective.

22 I never had a complaint. Never had a complaint filed  
23 against me as far as fairness goes or --

24 CHAIRMAN LOCKYER: Misuse of force, or any such  
25 thing?

26 MR. BAKER: Correct, not once.

27 CHAIRMAN LOCKYER: I don't know what else one could  
28 say about that.





1 I don't know if there's any opposition present, but  
2 if there is, we'll get to that in a moment, but I would just  
3 encourage people to try to be specific and provide an objective  
4 basis for apprehension, rather than a more generalized one.

5 There may be questions from Members of the Committee.  
6 I'll start with that before calling on any testimony, support or  
7 opposition.

8 Anyone who wishes to comment that's with us?

9 This may be awfully fast. See what happens when you  
10 take up so much time on the first one, then you kind of move  
11 fast on the next couple, then you slow down again.

12 MR. BAKER: I'm feeling better already, Senator.

13 CHAIRMAN LOCKYER: What's the toughest decision you  
14 can recall confronting so far while you've been there, about a  
15 year almost?

16 MR. BAKER: Yes, sir.

17 CHAIRMAN LOCKYER: Do any stand out as either a  
18 specific case or a kind of decision that troubled you the most?

19 MR. BAKER: Probably, Senator, in some cases, we are  
20 mandated by law to not retry a case. And every once in a while,  
21 you run into one where that's exactly what you'd like to do, and  
22 you just can't do it because the law says you can't do it.

23 CHAIRMAN LOCKYER: What would be the circumstances  
24 where you would wish to?

25 MR. BAKER: For example, in a case where, because of  
26 the felony murder rule. For example, two people go to rob a  
27 liquor store. One of them goes inside; the other one stays  
28 outside in the car, doesn't -- nobody's supposed to get hurt,



1 but the guy inside will kill the clerk and then come running  
2 out. The guy outside will give himself up.

3 That's second degree murder or first degree murder,  
4 actually, and he'll go to prison.

5 It's very difficult, sometimes, if you look at an  
6 individual like that, and you really would like to retry the  
7 case but you can't.

8 CHAIRMAN LOCKYER: Because your, at least, impulse is  
9 that, perhaps, the doctrine is unduly harsh in some of those  
10 type circumstances?

11 MR. BAKER: In a few of them, not all of them.  
12 There's some of them, the guy deserves to go to prison.

13 CHAIRMAN LOCKYER: But that's the kind of situation  
14 you're referring to?

15 MR. BAKER: Exactly. That's probably the hardest  
16 decision, when you ask about the hardest decisions, yes.

17 CHAIRMAN LOCKYER: I notice there's been a fairly  
18 significant increase in parole revocations. Of course, that's  
19 part of your job, to make those determinations.

20 What's going on? Can you tell why we've had these  
21 statistical jumps?

22 MR. BAKER: Senator, I probably can't speak to that  
23 because I've only been there a year. And during the year that  
24 I've been there, I can tell you the policy that's used during  
25 that time, and that is, public safety comes first.

26 CHAIRMAN LOCKYER: Has anyone suggested that wasn't  
27 the policy in an earlier time?

28 MR. BAKER: Nobody has suggested that.



1           It has been suggested that the Governor, this  
2 particular Governor, personally reads every decision that goes  
3 to him, where Governors in the past perhaps personally didn't  
4 read them. Maybe a staff member read it or something.

5           CHAIRMAN LOCKYER: This Governor reviews the  
6 revocations, or what is he reviewing?

7           MR. BAKER: If a panel gives a prisoner a date, a  
8 parole date, that will automatically go to the Governor. The  
9 Governor will personally read the whole transcript.

10          CHAIRMAN LOCKYER: I see, okay. Because he has to  
11 make a decision as to whether to request you to review your  
12 parole date decision?

13          MR. BAKER: That's correct.

14          CHAIRMAN LOCKYER: How many decisions do you make in  
15 the course of a year?

16          MR. BAKER: We make 16 a week.

17          CHAIRMAN LOCKYER: That's a lot of reading.

18          MR. BAKER: Yes, sir.

19          CHAIRMAN LOCKYER: Have there been instances you can  
20 recall during this year when the Governor has recommended  
21 review?

22          MR. BAKER: Recommended that another panel take a  
23 look at the same case?

24          CHAIRMAN LOCKYER: Yes.

25          MR. BAKER: Yes, there's been a couple, or two or  
26 three of those. Not really that many

27          CHAIRMAN LOCKYER: Were you on either the first or  
28 the second panel in those situations?





1 MR. BAKER: I have been on the second panel in a  
2 couple, two or three of them.

3 CHAIRMAN LOCKYER: Do you recall any different  
4 decision being made by panel two than was rendered by panel one?

5 MR. BAKER: I think it's split pretty well evenly. I  
6 specifically remember in a couple of cases where the prison was  
7 allowed to keep his date, but I also remember in a couple cases  
8 where it was taken away.

9 CHAIRMAN LOCKYER: How would you distinguish between  
10 those, to the extent that you can recall those details? What  
11 were the grounds for changing the date or delaying the parole  
12 decision versus keeping the original?

13 MR. BAKER: Senator, I'm not sure I can remember the  
14 exact specifics. I can tell you one of the things that I look  
15 at the strongest.

16 CHAIRMAN LOCKYER: Okay.

17 MR. BAKER: And I don't want to send somebody back to  
18 the street the same person that they were when they came into  
19 the system. So, I will look very hard at their criminal  
20 history, at the gravity of the offense itself. Have they  
21 programmed? In other words, have they got their GED if they  
22 didn't have one when they came in? Was alcohol or drugs a part  
23 of the crime, and if so, what have they done to take care of  
24 that? Have they been to AA; do they know the 12 steps of AA?  
25 What kind of support do they have on the outside?

26 These are the kinds of things that I look at real  
27 strong. And also, what does the psychiatrist say?

28 CHAIRMAN LOCKYER: That sounds like a very thoughtful



1 process.

2 Senators?

3 Anyone here who wishes to comment?

4 MS. BERRY: My name is Gina Berry. I am Director and  
5 staff attorney for the Prisoners Rights Union.

6 I'm here to support the confirmation, Mr. Baker's  
7 confirmation, for several reasons.

8 When I first heard of his appointment, I was very  
9 troubled, because it represented a trend I had seen recently in  
10 appointments to the Board of Prison Terms, where, if the person  
11 had an exceptionally strong tie with law enforcement, a career  
12 in law enforcement, or a strong tie plus a strong tie with  
13 criminal rights/victims' rights groups, he was -- he or she was  
14 assured a position on the Board of Prison Terms.

15 That instantly raised in my mind, as an attorney,  
16 fairness. I was prepared to fight Mr. Baker any time he came on  
17 my panel, and in fact did challenge him initially.

18 However, Mr. Baker has sat on a couple of my panels,  
19 including a parole recission hearing where I did not agree with  
20 the decision, but I found him to be exceptionally fair, and  
21 exceptionally tough. He asks the right questions. He does not  
22 mischaracterize the answers. He does not mischaracterize the  
23 history. He plays by the rules. He does it the way it should  
24 be done.

25 I only wish, as an advocate for inmates and a parole  
26 attorney, that all of the Commissioners currently sitting could  
27 be as fair as he is and could play by the rules, which are clear  
28 and give the Board of Prison Terms Commissioners a great deal of



1 discretion in reviewing evidence.

2 I am very happy with this experience and what he's  
3 shown up to this time. I only hope it stays.

4 So, I would support his confirmation.

5 CHAIRMAN LOCKYER: Thank you.

6 Did you want to add anything or make additional  
7 comments?

8 MS. STEWART: My name is Karen Stewart, and I'm not  
9 here representing any particular group, but I am here to  
10 represent some personal concerns.

11 In the past, we've been allowed to take a neutral  
12 stand. I'm not here to oppose Mr. Baker.

13 I also echo Gina Berry's comments that I have heard  
14 from prisoners, and families, and other attorneys that he asks  
15 very appropriate questions, is fair and impartial, and I would  
16 encourage the other Commissioners to be the same way.

17 CHAIRMAN LOCKYER: Are you representing a group  
18 today?

19 MR. STEWART: No, not today. I'm just speaking for  
20 myself.

21 I do want to take the opportunity to use this forum  
22 to talk about three areas of concern with the Board of Prison  
23 Terms.

24 The law states that the confirmation of Commissioners  
25 should be a cross-section of the population of the state;  
26 cross-section in the areas of racial, sexual, economic, and  
27 geographic figures or features.

28 So, the areas I want to bring up today is that when





1 there were 12 prisons, the law allowed 9 Commissioners. Today  
2 there are 27 prisoners [sic] and 6 more in the pipeline, and  
3 still only allows 9 Commissioners.

4 What's resulted is, the Board is trying to meet the  
5 growing demand of parole hearings in very innovative ways, such  
6 as four hearings in one day; asking prisoners to sign waivers  
7 for two years; or just giving out blanket two-year denials to  
8 space out the workload.

9 And the result has been very over worked  
10 Commissioners, less time for them to closely review the  
11 prisoner's Central File, and less time to discuss in-depth  
12 questions with the prisoners. And the prisoners are getting a  
13 feeling of hopelessness from all of this.

14 And there's costly litigation in the courts, such as  
15 the current Morales case, from the prisoners seeking relief to  
16 be considered under the laws in effect at the time that they  
17 were convicted.

18 So, I guess today I'm asking in regards to this  
19 concern that a bill be introduced to increase the number of  
20 Commissioners to meet the demands for the 11,000-plus prisoners  
21 in the prisons today. And with the Three Strikes and you're in  
22 prison for life, that number of life of prisoners can only  
23 escalate as will the parole hearings.

24 My second area of concern is the Board members.  
25 There are currently two ex-Legislator Commissioners, a Caucasian  
26 female, and a Caucasian male. There is one vacancy. The  
27 remaining six positions have been appointed to males primarily  
28 from Southern California whose previous occupations were in law



1 enforcement.

2 We have no Pacific Islanders. We have no Asians, and  
3 we have no American Indian Commissioners. We have one female  
4 Commissioner out of nine possible.

5 I'm also requesting that in the introduction of the  
6 bill, that it would truly reflect the intent of the current law  
7 by adding some specific language that states that no more than a  
8 certain number of Commissioners be from law enforcement  
9 background, and that perhaps there be a psychologist, a  
10 sociologist, a small business person, maybe a CEO, an educator,  
11 a defense attorney, or a minister, to give us more of a true  
12 cross-section.

13 My third area of concern is, today I am requesting  
14 that the Department of Corrections submit a quarterly report to  
15 the Board of Prison Terms, listing what types of prisoner  
16 self-help programs are available; what institutions are  
17 operating these self-help programs, and the maximum number of  
18 prisoners that can participate in each program at any given  
19 time.

20 I make this request due to the Board's recommendation  
21 to lifers for some things, such as completing an AA degree, or  
22 to participate in an anger control management group. In  
23 checking with the Department of Corrections, these programs  
24 currently do not exist in the Department of Corrections. And if  
25 they do not relay this information on the updated quarterly  
26 information to the Board, they cannot make adequate  
27 recommendations to the prisoners.

28 So, my comments today, they're not intended to



1 criticize the Board, but to provide suggestions that I believe  
2 would benefit the Board, the prisoners, and the taxpayers'  
3 expenses for court litigation against the Board.

4 Thank you for your time.

5 CHAIRMAN LOCKYER: Thank you very much.

6 Next, please.

7 MS. RODGER: I am representing Concerned Citizens for  
8 Prisoners, CCP, and we are here today to represent the people  
9 who are interested in CCP, which is the voice of over 300  
10 families of prisoners and people concerned about the prisoners  
11 and for victims and victims' families.

12 Because we have groups from both sides, we tend to  
13 have to stay in the middle of the road, so we try not to get on  
14 the outside of anything.

15 We have nothing personal against Mr. Baker, but we  
16 are strongly opposed to his confirmation.

17 In the Penal Code, Part 3, Title 7, Section 5075, the  
18 selection of Commissioners for the Board of Prison Terms and  
19 their appointment by the Governor and confirmation by the Senate  
20 shall reflect as nearly as possible a cross-section of the  
21 racial, sexual, economic, and geographic features of the  
22 population of the state.

23 The current Board does not follow these requirements.  
24 These are not guidelines, but requirements. The BPT is  
25 comprised of two ex-Legislators and six ex-law enforcement.  
26 Seven-eighths of the current Commissioners are male, although  
27 the general population is less than half male. Three-fourths of  
28 it are ex-law enforcement. Is the general population





1 three-quarters law enforcement? Three-fourths are from Southern  
2 California. I question, do three-quarters of California's  
3 population live in San Diego County?

4 All are of a higher economic group, and this is  
5 actually the smallest percentage of the population.

6 These members certainly do not represent a  
7 cross-section of the racial, sexual, economical [sic] and  
8 geographical features of the population of the state.

9 With the confirmation of Steven Baker, the BPT is  
10 further eschewed against any prisoners being paroled. There are  
11 over 11,000 prisoners who have served over their minimum time,  
12 and most are well adjusted and rehabilitated to be productive  
13 parts of society. Releasing those who are no longer a threat to  
14 society would relieve the overcrowding of the prisons and save  
15 the taxpayers money. And being a taxpayer, I'm very interested  
16 in that.

17 BPT Commissioners are being prejudiced by theirs or  
18 their spouse's membership in the boards of victim rights groups,  
19 who are beholden to the California Correctional Peace Officers  
20 Association for financial support, and I think that was very  
21 evident in the Sacramento Bee not long ago.

22 One of the Commissioners, John Gillis, whose daughter  
23 was murdered by gang members, is already a member. And now  
24 you're asking us to accept Steve Baker, whose son was murdered  
25 by Robert Alton Harris, and Mr. Baker witnessed the execution of  
26 Harris at San Quentin in 1992.

27 How can these people be impartial judges of who  
28 should or should not be paroled? We have no control over who is



1 already on the BPT, but do we have to appoint another  
2 Commissioner with such a flagrant conflict of interest? And who  
3 would be cited on the conflict of interest, Mr. Baker or the  
4 Senate Committee who appointed him?

5 Please vote no on Mr. Baker's confirmation.

6 If you'd like copies, I have copies.

7 CHAIRMAN LOCKYER: Senator Lewis.

8 SENATOR LEWIS: Just a quick question.

9 MS. RODGER: Certainly.

10 SENATOR LEWIS: Can you explain to me why a  
11 geographical diversity is important?

12 MS. RODGER: Because people from different areas of  
13 California, and I found to to be true when I was doing  
14 compliance work for the federal government, have very different  
15 ideas on what should or should not be done, whether it has to do  
16 with crime, or whether it has to be safety in the work place.

17 And because, if you bring in from the same geographic  
18 area, you're going to get one idea, not a cross-section of what  
19 the whole state believes.

20 I found this very true in safety. I was a compliance  
21 officer with the federal government.

22 SENATOR LEWIS: Are there any studies that you can  
23 point to?

24 MS. RODGER: I didn't think to look up any, no, but  
25 I'm sure there are.

26 CHAIRMAN LOCKYER: Again, I'm sorry, I maybe was too  
27 focused on the letter here, but the geographic relevance is  
28 what?



1 MS. RODGER: Is because people in one geographic area  
2 have generally the same ideas about things, whether it's crime,  
3 or whether it's religion, or whatever.

4 CHAIRMAN LOCKYER: I thought that's what I heard.

5 MS. RODGER: I saw this when I was with the federal  
6 government in safety.

7 CHAIRMAN LOCKYER: I guess I'm much more aware in my  
8 own district of the diversity of opinion between San Leandro and  
9 Hayward, or Fremont and Castro Valley, and on and on and on, or  
10 even within the same community, the hills and the flat lands.

11 I understand your general point, they may all read  
12 the same newspaper, especially in San Diego.

13 Senator Petris.

14 MS. RODGER: May I answer?

15 CHAIRMAN LOCKYER: Yes.

16 MS. RODGER: To go back to your area, because I used  
17 to live over there and work over there, if you take all of the  
18 people and put them on the Commission that are from the hills,  
19 you're going to get one opinion than when you take the people  
20 from down in the flat lands that are of a --

21 CHAIRMAN LOCKYER: But you're saying everyone from  
22 San Diego is the same, and that's kind of my point. There are a  
23 lot of San Diegos.

24 MS. RODGER: That's right.

25 SENATOR LEWIS: Actually, I think she's saying  
26 everyone from Southern California is the same.

27 CHAIRMAN LOCKYER: That's true.

28 MS. RODGER: And we from Northern California would





1 like them to drop in the ocean.

2 CHAIRMAN LOCKYER: No, I understand your point,  
3 although I guess with respect to these criteria, I'd be more  
4 concerned about the occupational over-concentration.

5 MS. RODGER: Exactly.

6 CHAIRMAN LOCKYER: I think that's a more serious  
7 problem generically.

8 Senator Petris.

9 SENATOR PETRIS: I agree, but the appointing  
10 authority sits downstairs in the corner office. And I would  
11 address that to others who've spoken.

12 You need to write to the Governor about the make-up  
13 of the Board.

14 I suppose we could turn down everybody that doesn't  
15 fit the pattern, but that's not a very good way to harmonize  
16 with the executive.

17 Now, my question is, going from an uneasiness because  
18 of his background and the terrible thing that happened in his  
19 family, to the conclusion that he can't be objective is a very  
20 leap, it seems to me. And you've got a test here.

21 He was asked what happened afterward, and he served  
22 for many years in those very areas, involving violent crimes and  
23 so forth, as a police officer. And I wondered if you know of  
24 anything in his record that demonstrates that he lost  
25 objectivity and was excessively rough on people in violent ways,  
26 and so forth?

27 We've seen that in the movies a lot, you know.  
28 Somebody goes out and makes themselves a personal avenger



1 because a member of his family -- doesn't have to be a  
2 policeman, but any family.

3 But we don't have anything in the record. We asked  
4 him, and he said that he hadn't had one complaint in all these  
5 years. It seems to me that would speak pretty well for a person  
6 who's literally on the firing line.

7 It's easier to be objective when you're so far  
8 removed from the firing line as to be on this Board, as opposed  
9 to being active, you know, out there in the field, or where ever  
10 he is in his police duties.

11 MS. RODGER: But you have to remember, sir, that the  
12 policemen have one thought, and that's everybody's guilty. And  
13 there's another side to the story; there really is.

14 And I am of a family, a victim family, so I can see  
15 where they can become very vindictive about the fact that their  
16 family member was victimized. But that's not being fair, that's  
17 not being just.

18 And his wife serves on the Victims Rights Board. So,  
19 you've got an awful lot of ties there to the victims rights  
20 side, with no ties to the prisoners' side.

21 That's where our concern is. It should be balanced.  
22 There should be ties on both sides.

23 CHAIRMAN LOCKYER: I always thought that when I see  
24 an officer with someone in the back seat of the car that they're  
25 driving away, that all the citizens around are thinking, "Oh,  
26 yeah, there goes another presumptively innocent man."

27 [Laughter.]

28 MS. RODGER: And it's so easy to be considered



1 guilty. My son was picked up that way, and he had nothing to do  
2 with it.

3 SENATOR PETRIS: But I can't go along with your  
4 conclusion. It's too broad and sweeping, that police think  
5 everybody's guilty. If they did, everybody in this room would  
6 in jail right now, or at least be under prosecution.

7 I've always had a healthy arms-length dealing with  
8 the police. I've always been one who questions authority. I  
9 read the bumper strip. I don't have one, but I see it once in a  
10 while on the back of the car: Question Authority. I think it's  
11 a healthy attitude because the police have a lot of power, and  
12 they need to be held in check by the rest of us citizens.

13 But I don't think that every cop thinks the first  
14 suspect that comes along is automatically guilty. The best of  
15 them, and they all strive for the higher standard, checks those  
16 things out very carefully.

17 I think that maybe it's time to talk about that very  
18 popular and famous television series that lasted for so long,  
19 Gardner's books and stuff. What's his name? Perry Mason.

20 I thought that did the greatest disservice to our  
21 justice system of any program I've seen, because it was just the  
22 opposite. Kind of like what you said: everybody who was  
23 suspected is guilty, Perry Mason showed that nobody who is  
24 suspected is guilty.

25 I didn't think he was such a hot lawyer, but he was a  
26 hell of a detective. As a lawyer, he went out and found the  
27 guilty party, and conveniently arranged to have him sitting  
28 court during the trial.





1 I mean, that's so far removed from reality. I think  
2 it gave the wrong impression to the public, and I thought it was  
3 a great disservice to the public, and I was happy to see the  
4 series finally disappear, although I guess it's on some reruns.

5 That doesn't do justice to the police, or the courts,  
6 or anybody. It shows that that fellow who played the detective  
7 -- I forget his name -- but the poor guy, I mean the prosecutor,  
8 he lost every case.

9 CHAIRMAN LOCKYER: You'd think he wouldn't get  
10 re-elected; wouldn't you?

11 SENATOR PETRIS: I mean, what does that do to our  
12 image of the police if we're going to go along with that?

13 There are policemen out there who've served a  
14 lifetime, and they arrest all kinds of people, and they never  
15 win one case. They always get the wrong guy.

16 So, I think that program stinks, frankly.

17 I don't know what it has to do with this hearing.

18 [Laughter.]

19 SENATOR PETRIS: I got it off my chest.

20 CHAIRMAN LOCKYER: Did you have anything else to add,  
21 or may we call on --

22 MS. RODGER: The point I was trying to make, and I'd  
23 like to make it very strong and clear, is that we need to get  
24 the middle of the road. We need to get somebody on that Board  
25 that has some feelings for the prisoners.

26 CHAIRMAN LOCKYER: My intuition, more than anything,  
27 is that you've got it. This is the best, the very best, you're  
28 going to do with the current appointing authority.



1           And I hope he's as good as he sounds. I'm impressed.  
2 And, you know, that's perhaps another way of saying the Governor  
3 just got re-elected.

4           We have some obligation in the balancing and weighing  
5 of things to extend ourselves to accommodate the perspectives  
6 and philosophy of the appointing power in the chief executive.  
7 We can say no on occasion, and we do, but those should be  
8 infrequent, and I think this is perhaps one of those  
9 circumstances. Actually, this is more than just, in my mind,  
10 comity with the Governor, but rather thinking we've got a fair  
11 guy here, as the first witness indicated.

12           But I understand your concerns.

13           SENATOR PETRIS: Mr. Chairman, I'm sorry. I'd like  
14 to add one observation.

15           Again, emphasizing the appointing authority, I think  
16 the Governor needs to hear from people who are informed on  
17 what's going on inside and are concerned.

18           I remember when Pat Brown was Governor. After he  
19 decided to appoint an individual to the court, he always asked  
20 them to do one thing before taking the oath: visit your local  
21 county jail and go visit the nearest state prison, and let's  
22 talk after that. And he delayed approving it until that  
23 happened; at least exposed him or her to that one experience.

24           Now, maybe as attorneys they'd done it many times but  
25 he just wanted to be sure that they had it in mind in this new  
26 capacity for sentencing people.

27           So, we do need to have that sensitivity, I certainly  
28 agree.



1 MS. RODGER: And I take your suggestion very  
2 seriously, and I will contact the Governor because they really  
3 do need to know. Many, many of your attorneys have never been  
4 in a prison, and they only talk to the prisoners. They don't  
5 get inside and know what's going on. And that's unfortunate.

6 I inspect the prisons as a safety person and a  
7 compliance officer, so I've seen the inside as well as the  
8 outside.

9 SENATOR PETRIS: Federal system?

10 MS. RODGER: Yes.

11 SENATOR AYALA: I just want to say that I understand  
12 what Senator Petris says about Governor Pat Brown asking  
13 perspective judges to visit the county and the state jails.

14 I would like to propose that these people that commit  
15 murder, or other, do the same thing before they do it.

16 SENATOR PETRIS: Some of them have already served  
17 time.

18 MS. RODGER: They're doing that with some juveniles  
19 in our county to keep them from committing that crime, and it's  
20 effective.

21 CHAIRMAN LOCKYER: Thank you for your assistance.

22 Did you want to add something?

23 MS. HINES: I just wanted to oppose.

24 Since everyone has so eloquently explained my  
25 feelings on the subject for my opposing Mr. Baker's  
26 confirmation, I don't guess there's much left to say except that  
27 I think as much of a police state as California is becoming,  
28 that to continue to put law enforcement on the Board is just





1 carrying it a little bit far, I think.

2 As Ms. Rodger says, we do need more of the  
3 socioeconomic breakdown, more of a racial, more of a sexual, the  
4 whole thing has got to be changed.

5 CHAIRMAN LOCKYER: I failed to ask you to identify  
6 yourself.

7 MS. HINES: Oh, my name is Caral Hines, and that's  
8 spelled C-a-r-a-l.

9 CHAIRMAN LOCKYER: All right, we've got your point.  
10 Thank you.

11 Next.

12 MS. RUDIGER: I was so remiss in waiting for three  
13 hours and not being heard, so I thought I would lend our support  
14 to Steve Baker.

15 My name is Kelly Rudiger, and I serve as Executive  
16 Director of the Doris Tate Crime Victims Bureau.

17 I am here today representing thousands of crime  
18 victims and advocates from across the state who know and have  
19 witnessed the dedication and character of Mr. Steve Baker.

20 I'm here to give you a personal view of the work and  
21 commitment Steve Baker has contributed to the welfare and the  
22 citizens of California. Over the past few years, I have had the  
23 opportunity and the privilege to work alongside Steve on a  
24 variety of public safety issues.

25 I want to emphasize that as a crime victim survivor,  
26 we have first-handedly paid the highest price of crime -- the  
27 life of a lost loved one -- and it's our top priority to promote  
28 the legal right of all individuals to safeguard our society from



1 future violent acts of crime.

2 But becoming a crime victim does not make you an  
3 expert on the issue. The reason I am here today is to promote  
4 the confirmation of a concerned citizen who has seen the  
5 tragedies caused both as a police officer and the father of a  
6 murdered child by releasing violent felons when they are still a  
7 threat to our public safety.

8 This is why Steve's background, community service,  
9 and professional career as a San Diego police officer and  
10 detective have made him an expert on this issue. He has  
11 experience to make tough decisions, and the background to make  
12 the right decisions.

13 I feel very honored today to be here speaking on  
14 behalf of Steve as a friend, a colleague, and we are all lucky  
15 to have such a knowledgeable man willing to commit himself to  
16 this job. He warrants your vote of confidence in this  
17 confirmation hearing.

18 Thank you.

19 CHAIRMAN LOCKYER: Thank you. That's helpful, I  
20 guess.

21 Did you want to close, conclude in any way? I think  
22 we're ready to proceed to a vote, Mr. Baker.

23 MR. BAKER: I will submit it.

24 SENATOR AYALA: I'll move.

25 CHAIRMAN LOCKYER: Senator Ayala makes the motion  
26 that we recommend confirmation. Call the roll, please.

27 SECRETARY WEBB: Senator Ayala.

28 SENATOR AYALA: Aye.



1 SECRETARY WEBB: Ayala Aye. Senator Lewis.

2 SENATOR LEWIS: Aye.

3 SECRETARY WEBB: Lewis Aye. Senator Petris.

4 SENATOR PETRIS: Aye.

5 SECRETARY WEBB: Petris Aye. Senator Beverly.

6 SENATOR BEVERLY: Aye.

7 SECRETARY WEBB: Beverly Aye. Senator Lockyer.

8 CHAIRMAN LOCKYER: Aye.

9 SECRETARY WEBB: Lockyer Aye. Five to zero.

10 CHAIRMAN LOCKYER: Thank you, sir. We appreciate  
11 your public service.

12 MR. BAKER: Thank you.

13 CHAIRMAN LOCKYER: Mr. Ruggles, Worker Comp. Appeal  
14 Board. Good afternoon, sir.

15 MR. RUGGLES: Thank you.

16 CHAIRMAN LOCKYER: Anything you want to begin with by  
17 way of introduction or anything?

18 MR. RUGGLES: Well, I did make a couple of notes. I  
19 thought I'd better write it down.

20 CHAIRMAN LOCKYER: All right.

21 MR. RUGGLES: This is unfamiliar forum today.

22 Good afternoon, and I appreciate the opportunity to  
23 be here this afternoon.

24 As some of you may be aware, I come to this position  
25 from a career in and around the real estate industry. It  
26 started with CB Commercial, the old Caldwell Banker, then went  
27 into construction as a laborer, carpenter, in sales and  
28 development, then into mortgage banking before I started my own





1 little company to invest in and develop industrial property.

2 When that business became unprofitable in the mid to  
3 late '80s, I decided to let that be it as far as my career in  
4 the commercial world was concerned. But I was not ready to  
5 retire, and determined to try and find something in the public  
6 sector that would allow me to use my experience, judgment,  
7 common sense, what I feel is a sense of fairness, to deal with  
8 an issue of long-term and basic importance to the public.

9 When the Governor offered me this opportunity last  
10 winter, it seemed to fit the bill. Although I don't bring to  
11 this position any particular direct experience with workers'  
12 compensation, I do bring some familiarity with some of the  
13 elements involved, having grown up in a medical family, having  
14 dealt with a variety of legal and some insurance issues in  
15 connection with my business, and in dealing with people in  
16 determining their credibility and negotiating differences to  
17 bring about a balanced conclusion.

18 What I have not brought to this Board, however, is  
19 any particular ideology or a personal agenda. I feel I was  
20 appointed to this lay position on the Board to be an impartial  
21 representative of the people of California, to use my common  
22 sense, and I think I've -- and I've endeavored to do that.

23 CHAIRMAN LOCKYER: Let me just kind of reverse order  
24 and ask if there's anyone present that would wish to comment,  
25 either for or opposed to the confirmation of Mr. Ruggles.

26 Seeing none, then to ask Members if they have any  
27 questions to pose.

28 And hearing none, asking Members if anyone desires to



1 make a motion?

2 SENATOR PETRIS: He's from my district.

3 CHAIRMAN LOCKYER: That's good for a motion here,  
4 sir. I think that's what it was.

5 SENATOR PETRIS: That's right.

6 CHAIRMAN LOCKYER: All right, we have a motion.  
7 This is pretty good.

8 SENATOR PETRIS: Tough fight.

9 CHAIRMAN LOCKYER: You know, they wore us down, all  
10 those ones ahead of you.

11 MR. RUGGLES: I didn't even have to face such an  
12 important decision when I was given the appointment, as Senator  
13 Petris did.

14 CHAIRMAN LOCKYER: Just so you'll know, part of our  
15 homework is to hear or solicit the evaluations of numerous  
16 groups and individuals that do business before you, and your  
17 reputation precedes you as diligent, hard working, honest,  
18 careful, competent, and fair.

19 And I heard those things and thought, okay, this is  
20 going to be a quick one, and I've now talked longer than all  
21 combined.

22 So, we'll take Senator Petris's motion. If there's  
23 no objection, may we substitute the role. All right, five yeases  
24 and no noes.

25 [Thereupon the previous roll  
26 was substituted, and the  
27 confirmation was recommended  
28 with the vote of 5-0.]



1 MR. RUGGLES: I had planned to say a couple of things  
2 at the conclusion, but I'll just say thank you.

3 CHAIRMAN LOCKYER: All right, sir.

4 Dr. Smith is our remaining appointee, and I guess  
5 Senator Russell wished to join us.

6 Dr. Smith, you might come on up, if you would wish  
7 to, and we can insert Senator Russell, perhaps, whenever he gets  
8 here.

9 Did you have anything you wanted to begin with, any  
10 statements or thoughts?

11 DR. SMITH: Certainly for the sake of moving the  
12 process along, I would just like to say --

13 CHAIRMAN LOCKYER: I'd recommend you take your time,  
14 because this isn't going to be a fast one.

15 DR. SMITH: Thank you.

16 My background is one of, I spent 25 years with Bank  
17 of America. And my background is certainly in the area of  
18 management.

19 I would like for each and every one of you to know  
20 that my children attend public schools in the State of  
21 California. I am certainly a friend of public education.

22 I have spent a number of years in my community  
23 involved with public schools. In fact, I was the Chairperson  
24 for a kindergarten program for four-year-old children in the  
25 State of California, and it has since become a model program for  
26 other school districts within the state.

27 I served my school board in the Pasadena community  
28 for some four years. It has been said that I was somewhat





1 divisive. I guess, coming from a school district where 80  
2 percent of the students were performing at a D or less grade  
3 point average, being divisive somehow meant that you were very  
4 interested and certainly believed that all children could learn,  
5 then certainly I was divisive.

6 If it also meant that I was certainly concerned about  
7 making sure that the community understood how poorly our school  
8 district was doing, and certainly trying to solicit their  
9 support and their energies in joining me and making change, if  
10 that's considered divisive, yes, I was divisive on my school  
11 board.

12 CHAIRMAN LOCKYER: What changes occurred while you  
13 were there, or what were the issues that you would characterize  
14 as divisive?

15 DR. SMITH: We did things such as, in my community we  
16 were doing our general ledger once a semester. Coming from a  
17 business background and also teaching at the local community  
18 college, I taught in the School of Business how to run and  
19 operate your own business as well as finance management.

20 CHAIRMAN LOCKYER: We just said we'd start to use our  
21 time well, but get you in the mix here whenever you showed up.

22 Sorry, we kind of ended the prior discussion a little  
23 more abruptly than anticipated.

24 SENATOR RUSSELL: I just wanted to introduce Wilbert  
25 to you. He's a friend of mine and a constituent.

26 I think he's an outstanding person and will do a good  
27 job.

28 I don't know how much he's told you about himself,



1 but he is a native of Los Angeles. He's got a Master's degree,  
2 a Bachelor's degree, and a Doctor of Philosophy.

3 He worked at the Bank of America for 24 years,  
4 starting in the mail room at age 17. He worked his way up to  
5 Vice President and Director of National Accounts for its  
6 Business Services Division.

7 He's a high achiever. He's received many numerous  
8 awards, including the CEO's Eagle Award, the highest award  
9 offered by Bank of America.

10 He's active in his community. He's a reserve deputy  
11 sheriff and has been for 15 years. Part of his duties in that  
12 capacity has included three years of service on the drug abuse  
13 detail, providing drug counseling for juveniles and adults in  
14 schools and community programs. He has been an instructor in  
15 the School of Business at Pasadena Community College, and he's  
16 been a member of the Board of Directors of the Boy Scouts and  
17 was appointed by then-Governor Deukmejian to the California  
18 Child Development Advisory Council.

19 He also served a four-year term on the school board  
20 in Pasadena. Prior to that, he was active as a private citizen  
21 in raising private funds for a pre-kindergarten program for  
22 four-year olds, and that program has apparently become a model  
23 throughout the state and is used in many places. And as a  
24 result of that, that led to his election to the four-year term  
25 on the school board to which I just alluded.

26 He has run for Superintendent of Public Instruction  
27 this last time. In a field of 13, he came in third, just one  
28 percent behind Maureen DiMarco. So, he showed well in that



1 capacity.

2 His wife, Susan, lives in Pasadena and they have  
3 three children.

4 I have known him in the community. He's a man of  
5 strong principles, and I think he would do an outstanding job.

6 I appreciate the opportunity you've given me to  
7 present him to you, maybe after the fact, but nevertheless, I  
8 thoroughly endorse him and did so in the last election.

9 CHAIRMAN LOCKYER: Thank you very much, Senator.

10 Senator Lewis.

11 SENATOR LEWIS: Senator Russell, just a quick  
12 question based on your knowledge of Dr. Smith in the community.

13 I understand one of the raps on him from the  
14 opponents is that he's a divisive individual. Does he have that  
15 reputation in the community?

16 SENATOR RUSSELL: I have never seen that part of him,  
17 but I would say this, that the Pasadena School Board was  
18 dominated -- it's a five-person board. It was dominated by four  
19 individuals who happen to be members of the Democratic Party,  
20 and Wilbert is a Republican. And obviously, there's going to be  
21 a clash of philosophies.

22 And when somebody's outnumbered in that regard, and  
23 you can expect someone who's worth his salt to stand up for his  
24 principles and try to encourage the colleagues to see it his  
25 way.

26 So, if that's being divisive, then I suppose in that  
27 context he would be termed guilty, because he is a man of strong  
28 principles and strong beliefs.





1 But I think he relates well to people in the  
2 community activities in which I have seen him. I have never  
3 seen him be abrasive or divisive, or anything of that nature.

4 CHAIRMAN LOCKYER: Senator, I don't want to prolong  
5 this segment of the discussion, but I'm puzzled in this respect.

6 It's a nonpartisan office, school board. Just my own  
7 history of having served on my local school board, I think --  
8 I'm not sure what they all were -- but I think I fought the most  
9 with one of the other Democrats, and worked together the best  
10 with the two Republicans.

11 I don't see how that's an explanation, that he's a  
12 Republican and the others were Democrats with respect to  
13 controversies that might come before a school board, unless you  
14 can think of a specific controversy that comes to mind that  
15 might have been partisan.

16 SENATOR RUSSELL: I was not that close to the  
17 Pasadena School Board in their deliberations. This is just an  
18 assumption on my part that that might lend itself to that  
19 accusation.

20 CHAIRMAN LOCKYER: It might, and I guess the ethical  
21 question I've heard posed is this, and we'll have Dr. Smith  
22 comment when it's appropriate, is that he was a registered  
23 Republican, talked about considered running for school board.  
24 Others said, "You're going to have a difficult time in this  
25 community with both voters and endorsements you wish unless you  
26 re-register as a Democrat," which the record suggests he did  
27 prior to his candidacy, and then re-registered as a Republican  
28 again two weeks after being elected.



1           Now, maybe that's what caused some comment. I would  
2 suggest that's not a partisan issue but an ethical one.

3           I want to let Dr. Smith comment on that as soon as we  
4 conclude with the Senator.

5           SENATOR RUSSELL: I'm not aware of that.

6           CHAIRMAN LOCKYER: We were just beginning to ask,  
7 what were the controversies while you were on the school board.  
8 That's when you came in, so we'll go back to that.

9           And thank you. Your statement was typically good.

10          SENATOR RUSSELL: Thank you. I appreciate your  
11 consideration of Wilbert.

12          CHAIRMAN LOCKYER: What were the controversies during  
13 those four years of a policy sort, I assume, not a partisan  
14 sort, but either way?

15          DR. SMITH: I ran into trouble, Senator, when I  
16 advocated that we should run our school district like a  
17 business. When I indicated that we were running some \$132  
18 million through the turnstile, and that if we spent more than we  
19 brought in, we were going to go out of business like any other  
20 business. That we should invest in our employees. That we  
21 should look to strengthen our real estate portfolio to take a  
22 look at those assets that we had available to us that we weren't  
23 managing very effectively.

24          We were in the business of looking for land to sell  
25 versus looking for land to lease, because when you lease a piece  
26 of property, we all know that you cannot spend -- you can use  
27 those dollars for anything. But once you sell a piece of  
28 property, it must be used for capital expenditures only.



1           These kinds of things that I employed in my classroom  
2 on a daily basis, I tried to bring to the school district.

3           CHAIRMAN LOCKYER: What was investing in employees  
4 mean in your mind?

5           DR. SMITH: Teacher academies. I've been a member of  
6 the Los Angeles County Sheriff's Department for the last 16  
7 years. One of the things we always believe in, as at Bank of  
8 America the same thing applied, that the employee is your  
9 strength. And I wanted to see that we had an opportunity to  
10 make sure that a teacher who had been in the classroom for many  
11 years, got an opportunity to see the latest and most innovative  
12 techniques that were out there in the teaching field, as well as  
13 how do you -- working with law enforcement, and how do we work  
14 with children who are involved with drugs, and how do we deal  
15 with the drug babies that are now students in our system. That  
16 sort of thing.

17           I felt a tremendous frustration on behalf of  
18 teachers, that they didn't have the kind of training they  
19 required.

20           CHAIRMAN LOCKYER: I haven't heard an issue that  
21 would necessarily be disruptive or provocative.

22           DR. SMITH: No, no. That was just something that  
23 some pegged.

24           I had in my community --

25           CHAIRMAN LOCKYER: Were there a lot of four-to-one  
26 votes?

27           DR. SMITH: A lot of four-to-one votes on a couple of  
28 issues, yes.





1 CHAIRMAN LOCKYER: Give me an example.

2 DR. SMITH: One was the fact that we only had 6,000  
3 students; 5,700 high school students in the entire community,  
4 yet we had five high schools that we were operating.

5 I believed that we had an opportunity to consolidate  
6 at some of those schools because we were canceling classes in a  
7 major way because we didn't have enough students to hold those  
8 classes.

9 CHAIRMAN LOCKYER: School closures are always  
10 difficult.

11 DR. SMITH: That was a very difficult one, yes.

12 CHAIRMAN LOCKYER: If I asked one of the other four  
13 to tell an issue that they thought you were out of touch with  
14 the community, what do you think they would say?

15 DR. SMITH: I would say to you that the majority of  
16 those on the other side of the aisle it's simply because of my  
17 belief that parents should have the opportunity to walk away  
18 from schools that aren't performing well. And that's where I  
19 would philosophically differ with most educators.

20 CHAIRMAN LOCKYER: Did that come up at the time?

21 DR. SMITH: Oh, yes, it did; absolutely.

22 CHAIRMAN LOCKYER: While you were a board member?

23 DR. SMITH: Yes, while I was a board member.

24 CHAIRMAN LOCKYER: I know you had a prepared  
25 statement.

26 DR. SMITH: No, I don't, sir.

27 CHAIRMAN LOCKYER: All right.

28 One of the issues that we routinely ask of those that



1 will serve as Regents, or Community College Governors, or State  
2 College Trustees, is their views with regard to fees.

3 I willing to ask it in a very open ended way, or more  
4 direct specific way, depending on what would be easiest for you  
5 to just help us understand what your perspectives are regarding  
6 community college fees?

7 DR. SMITH: I believe there has to be some sort of  
8 income flow coming in that will supplement those dollars that  
9 are provided by our government.

10 In doing our cost benefit kind of analysis, we have  
11 to determine, from a business perspective, what that fee should  
12 be. There has been very limited discussion since my time on the  
13 Board with respect to fees.

14 I understand there was a much larger discussion that  
15 occurred prior to me coming on the Board.

16 I have taken a look at things such as deferred  
17 maintenance, the millions of dollars that we need to spend on  
18 our infrastructure, examining the fact that at any given Board  
19 meeting, we will find that schools are requesting more and more.  
20 There are certain schools who do not have facilities large  
21 enough to house the demand by the students.

22 We've got to toy with each and every one of these  
23 areas to make our determination in terms of what's the best  
24 allocation of the dollars that we do have. And certainly, are  
25 we using the dollars that we have in the wisest fashion  
26 available.

27 I believe that we need to take a look at innovation  
28 and innovative kinds of approaches with respect to junior



1 colleges before we just find ourselves, as I believe we have  
2 been in the past, of just simply shelling dollars out.

3 So, I believe, and specifically summing up your  
4 question with respect to fees, I believe there needs to be a fee  
5 that is charged. However, what that fee happens to be is part  
6 of that cost benefit analysis.

7 CHAIRMAN LOCKYER: Do you have any preliminary sense  
8 of whether the current \$13 a unit, I guess is the current fee --

9 DR. SMITH: Yes.

10 CHAIRMAN LOCKYER: -- whether that's too high, too  
11 low?

12 DR. SMITH: Our current fee structure has shut  
13 certain students out of the system, so it is incumbent upon us  
14 to make sure that every dollar that we have is spent as wisely  
15 as we possibly can, and for us to look for opportunities to  
16 reduce fees.

17 Fees should only be there to supplement the  
18 requirement, and I underline the word requirement, not to  
19 supplement waste or mismanagement.

20 CHAIRMAN LOCKYER: How much waste or mismanagement is  
21 there in the system?

22 DR. SMITH: There's certainly a -- I won't say  
23 tremendous. That might be the wrong phrase to use, but there is  
24 waste; there is mismanagement, to the degree of, a lot of our  
25 mismanagement is a lack of understanding how to run and operate  
26 a business, a lack of management skills, not so much something  
27 that's flagrantly occurring on behalf of our staff and employees  
28 up and down the state.





1 I believe that we've got to have technology enter the  
2 arena in a major way, and we've got to figure out ways to make  
3 that happen.

4 But I believe that we -- our goal has got to be that  
5 we can continue to do a better job in managing the meager funds  
6 that are available.

7 CHAIRMAN LOCKYER: Everyone on this side of the table  
8 has probably, at one time or another, discussed education in  
9 those terms. And it's insufficient to get a clear sense of the  
10 way in which a specific issue might be handled.

11 I don't know how to pin it down better, other than to  
12 ask from your observations of community colleges you've visited,  
13 programs you've looked at, work on the Community College Board  
14 of Governors, tell me specific items of waste that you would  
15 wish to eliminate.

16 DR. SMITH: I have taught in the classroom at the  
17 Pasadena Community College. Some of the things that I believe  
18 that I would take a look at are, just one simple example would  
19 be there's no clearing house for innovative approaches and  
20 innovative techniques.

21 Each and every college, as I see it, is out there,  
22 trying to reinvent the exact same wheel. That is not only  
23 costly, but it is not a wise way to do business.

24 So, I believe we need an innovative approach.

25 I also believe that you will find in our public  
26 education arena that it's about the only arena where we try to  
27 be all things to the business. We're the plumber; we're the  
28 electrician; we are the gardener; we are the educator; we are



1 the painter. We build the buildings. We do everything.

2 And I believe that no other business does that. I  
3 think other businesses say, what is the best use of our time and  
4 our dollars? What do we do best?

5 So, I believe that that's one area that we need to  
6 take a look at seriously, and that is contracting out for those  
7 services that are better provided by the private sector at a  
8 more cost effective fashion. I believe, historically speaking,  
9 anytime you find that the private sector engages the government  
10 sector, prices go down and quality will increase.

11 CHAIRMAN LOCKYER: What would be an example of  
12 something you would firmly or tentatively recommend with respect  
13 to current expenditures that might benefit in the way you  
14 indicate by contracting out?

15 DR. SMITH: One would be, you find most companies in  
16 the accounting, financial accounting arena, you will find that  
17 they are not doing their own payroll. They're not doing their  
18 own personnel work. They're not doing their own general ledger  
19 work. They're not doing the accounts payable. They're not  
20 doing the accounts receivable. That's just one arena.

21 But yet you will find that we are not only building  
22 the strongest MIS Department that we can, but MIS has nothing to  
23 do with actually delivering education. It's a cost to the  
24 organization.

25 CHAIRMAN LOCKYER: If the test is what's education or  
26 not, would you be able to distinguish between the financial  
27 services and the groundsman or the janitors, or the painters and  
28 plumbers, the list you had mentioned at the start. Would those



1 be potential areas of change?

2 DR. SMITH: Senator, I believe that nothing should be  
3 immune from our analysis when it comes to how we're going to  
4 spend the public's money. I believe we are mandated to find the  
5 most cost effective approaches that we possibly can to save  
6 every tax dollar on behalf of the citizenry of the State of  
7 California.

8 CHAIRMAN LOCKYER: Are there other questions from  
9 colleagues?

10 SENATOR AYALA: Yes, I'd like to ask the doctor,  
11 Doctor, are you against public education?

12 DR. SMITH: For me to say that I'm against public  
13 education is to say I'm against my own children. For me to say  
14 I'm against public education is for me not to -- in fact, the  
15 part of my life which has not been indicated to you today is  
16 that I have started a nonprofit foundation, called the Up and  
17 Coming Foundation. Our sole reason for existing is when the  
18 Pasadena Unified School District says to us that a child has  
19 been absent for 45 days, we go and we knock on the door of that  
20 young person, and we're trying to convince them to return to a  
21 public school sponsored program that we're housing at one of the  
22 local churches.

23 I say to you that everything that I am doing, even  
24 when I have spoken on behalf of the choice initiative, I started  
25 each presentation with the fact that I believe that this would  
26 strengthen public education.

27 SENATOR AYALA: Excuse me. The voucher system would  
28 enhance public education?





1 DR. SMITH: I believe that it would strengthen public  
2 education.

3 SENATOR AYALA: Would you explain that to me, because  
4 I think you're wrong. Go ahead.

5 DR. SMITH: And it's okay for us to disagree,  
6 Senator.

7 I believe that one of the things that we must do is  
8 certainly realize that in the sense and the spirit of the  
9 debates, our bottom line is that we're looking to do the best  
10 that we can for children. If we both agree that we're going to  
11 try to drive to the East Coast, and you take the northerly route  
12 and I take the southerly route, I think the thing that unifies  
13 us is our mission.

14 I believe that any time we have an opportunity to  
15 just take a look at the influx of students coming into the  
16 system. It's been projected that by the year 2005, we'll have  
17 to build one school each day between now and the year 2005.

18 SENATOR AYALA: I don't disagree with what you're  
19 saying, except that I don't agree with the way you're going to  
20 get there.

21 How can you tell me that you can spend public funds  
22 for private schools? That's unconstitutional.

23 DR. SMITH: No, sir.

24 SENATOR AYALA: You don't think it is?

25 DR. SMITH: I would say to you, and this is where we  
26 could have a friendly debate.

27 SENATOR AYALA: Sure.

28 DR. SMITH: There have been a number of cases that



1 have come before the Supreme Court, and they have stated that it  
2 is not in violation of the Constitution. And the reason it  
3 isn't is because the parents, the parent chooses where the child  
4 goes to school, not the state. And the voucher is sent, or the  
5 scholarship is sent actually to the parent. Delivered to the  
6 school, but it's not sent directly to the school.

7           SENATOR AYALA: You know, we had a big battle about  
8 busing here a few years ago. And you're going to tell me we can  
9 bus this kid from over here to the school over here because the  
10 parents like this school better.

11           Now, that's okay for people who can afford busing  
12 kids back and forth, but what about the parents who cannot bus  
13 someone from area of the city to the other? They don't have the  
14 choice. They've got to stay where they are.

15           How can you tell me that that's in the best interests  
16 of our students?

17           DR. SMITH: Senator, I would say to you that if I  
18 were to design a system, it would have been different than  
19 Proposition 174. If I were to take a look at some of the things  
20 that --

21           SENATOR AYALA: Are you changing your mind on that  
22 position you took on 174 now?

23           DR. SMITH: I'm saying to you that I felt that it was  
24 better than the status quo, but if I were to design my own  
25 system, it would have a number of things in there differently  
26 that would take into account a number of the things that you're  
27 raising.

28           SENATOR AYALA: But if the poor folks in the poor



1 areas of a city could not afford to take their kids to what they  
2 consider a better school, what do we have left in that school?  
3 Only those students that the parents can't afford to transport  
4 them somewhere else.

5 I don't consider that enhancement of public  
6 education.

7 DR. SMITH: Senator, I was fortunate enough to be  
8 part of working with a group of ministers, and there was  
9 approximately 150 or so around the table when we were discussing  
10 this. They were part of the Southern California Baptists  
11 Convention.

12 And they were very excited about opening their own  
13 schools. They were not interested in saying, "I hope someone  
14 accepts my child across town because I'm going to take the  
15 facilities that were present in the community."

16 And certainly, the concern has to be, if there's  
17 going to be enough of those kinds of scenarios.

18 But truly, individuals want to be in public schools.  
19 Kids want to be in public schools, with the big bands are, the  
20 big orchestras, et cetera.

21 SENATOR AYALA: I have no problem with choice, but I  
22 don't want public funds supporting those choices that are not,  
23 in my opinion and the opinion of many, constitutional. That's  
24 why we have a Constitution. You cannot provide public funds for  
25 private schools.

26 And every Tom, Dick and Harry can start one under the  
27 voucher system. And there's no oversight. They don't know what  
28 they're doing. They can disappear in two years, and what about





1 those kids left behind? Where do they go from there?

2 DR. SMITH: But truly, truly, I think that we're  
3 talking -- in the junior college arena, we have choice. So, I  
4 don't really believe it's going to be an issue there at the  
5 community college level.

6 I believe all students can choose the school that  
7 they choose to go to, and we're certainly going to send funding  
8 to that particular school.

9 SENATOR AYALA: But again, I go back, and afterwards  
10 I'm going to be quiet.

11 There is no public funds going for schools that are  
12 not public schools.

13 DR. SMITH: That's right.

14 SENATOR AYALA: And your proposition of the voucher  
15 system supported by many people -- not enough, thank God --  
16 would provide public funds for private schools, which, if I want  
17 to start a school, I get funded. That's not quite the way it  
18 was meant.

19 Public school, we ought to improve the public schools  
20 as much as we can, enhance the public schools themselves, not by  
21 deteriorating by taking away students.

22 DR. SMITH: If I may respectfully say, Senator, I'm  
23 working very hard to improve public schools. And that's what  
24 this program that I'm working with on a daily basis is involved  
25 in, and that's the Foundation. We go after kids who dropped  
26 out. I volunteer at my children's school. My children attend  
27 public schools.

28 I would certainly hope that we don't debate an issue



1 that did not pass. It's in the past.

2 SENATOR AYALA: But it's coming up again, I'm afraid.  
3 But we'll be better prepared for it this next time around.

4 But you confuse me when you tell me that you want to  
5 improve public schools, and you support the voucher schools that  
6 are deteriorating --

7 DR. SMITH: I can take the time to go into that and  
8 explain my position, if you would like for me to do that.

9 I simply believe, if you take a look at -- no one's  
10 looking at the overcrowded conditions. No one's looking at the  
11 fact that we're going to have 50 kids in a classroom by the turn  
12 of the century. I see absolutely no plan out there. I don't  
13 hear us talking about it in the Legislature. I don't hear these  
14 kinds of things.

15 I don't believe that we have a plan. And I believe  
16 for us to sit back and wait for this tidal wave to occur of  
17 young students --

18 SENATOR AYALA: But we do have a plan. We've got  
19 voucher schools that are governed by school boards today under  
20 the Hart bill. Those are schools which are --

21 DR. SMITH: The charter schools?

22 SENATOR AYALA: Charter schools. It's the beginning  
23 of that sort of thing. But they are only allowed to function if  
24 the school board allows them to, and they have all the controls  
25 of that.

26 The voucher system would have put the schools out  
27 there where nobody could touch them, and be accountable to no  
28 one.



1 I just don't understand how you tell me you're  
2 enhancing public education by deterioration of the public school  
3 by putting out, you know, the private schools. You confuse me.

4 CHAIRMAN LOCKYER: Respond in whatever ways you think  
5 are sufficient to explain your philosophies. You won't change  
6 Senator Ayala's on this point, but I want to make sure you have  
7 a fair opportunity to make any comment or explanation with  
8 respect to support of Prop. 174.

9 DR. SMITH: One of the things that I spoke very much  
10 about was the number of students that we are projected to have  
11 coming into our system. Our Finance Department says for the  
12 first time in the history of the State of California, we've got  
13 five tax dependents for every four taxpayers. I don't  
14 understand how we expect to have increasing revenues in the  
15 State of California.

16 I believe we've got to look for every opportunity to  
17 partnership with the private sector. In these partnerships,  
18 what we would be doing is drawing upon the millions of square  
19 feet that are vacant up and down the State of California.

20 We're not in the business of building buildings. So,  
21 I believe that we need to work out a plan.

22 If it wasn't 174, it's got to be a better one, but  
23 we've got to put our shoulders to the wheel to come up with what  
24 that plan should be. But we're got to be prepared to address  
25 the tidal wave of students in the system today.

26 If we took a look at building one school each day  
27 between now and the year 2005, just to keep our class sizes at  
28 their existing level, that's going to cost us \$32 billion. And





1 that 32 billion does nothing but build the building.

2 We know our largest incremental costs are salaries  
3 and benefits, so we've got a tremendous thing, a burden that's  
4 going to be upon us in the State of California.

5 I believe that's when we're going to drain the bottom  
6 line of public education in a major way, because we will not be  
7 able to house these students and educate them. So what do we  
8 do? If we had an opportunity to be proactive, to find the  
9 partnership that says not only can you save dollars by educating  
10 a kid in the private sector, but you also create a spirit of  
11 competition.

12 You see, I don't believe that this an issue for  
13 Beverly Hills Unified School District. The reason it isn't,  
14 because the teachers in those communities -- I'm sorry, the  
15 parents in those communities have the ability to exercise their  
16 rights as consumers. When education does not occur, the parents  
17 can take their children away, and they've got the dollars to do  
18 that.

19 This is an issue for the urban area, because those  
20 parents cannot exercise their right as consumers, and they have  
21 to deal with everything that's thrown at them. In those  
22 communities, you will have little Johnny come home, and the  
23 parent does not have the mind set to say, "Little Johnny, what  
24 did you learn today?" They say, "Thank God, Johnny's alive."  
25 That's how bad it is in these urban environments.

26 So, I believe if we can exercise and actually put  
27 into the pockets of those parents the ability to walk away from  
28 poor schools, you'll find public education will improve because



1 no one wants to lose students, and I believe today we too  
2 frequently look at those children as dollar signs, and we could  
3 care less what happens to them, for the most part.

4 We've got some great teachers out there. Don't get  
5 me wrong. But I don't know if we're that concerned about them  
6 in terms of what they are actually learning.

7 I want to change that. And that's my thrust on the  
8 Community Colleges' Board of Governors. I believe I've taken a  
9 leadership role in that body. I have brought to the table a  
10 foundation of a business perspective.

11 We talk about how we can work closer together. We  
12 talk more -- I'm one of the ones responsible for the retreat  
13 that we're getting ready to undergo next month, and we're going  
14 to talk about things that make it that much more cohesive as a  
15 body.

16 CHAIRMAN LOCKYER: Senator Petris and then Senator  
17 Lewis.

18 SENATOR PETRIS: Yesterday, I heard a report on the  
19 radio that Chrysler Motors showed a \$1.7 billion profit this  
20 last year.

21 And I remembered that a few years back, Chrysler  
22 Motors was in such bad shape that they had to be bailed out by  
23 the taxpayer.

24 So, I get nervous when I hear somebody say, "We've  
25 got to run this like a business." I'd like to know which  
26 business you're talking about.

27 As a lawyer for years, I handled a lot of  
28 bankruptcies. An awful lot of clients came to me who went broke



1 because they didn't know how to run a business. I'd hate to  
2 have them in charge of the school system or any other public  
3 agency, for that matter. They just didn't learn the ropes, and  
4 they paid for it.

5 So, if you've got some principles, some of which you  
6 enunciated in the beginning, that'd be fine. But I'm very  
7 nervous about the phrase, "You ought to run this outfit like a  
8 business." I want to know which business, because there are an  
9 awful lot of businesses that are very poorly run, from the Mom  
10 and Pop grocery, all the way up to General Motors.

11 You'll find waste and mismanagement at every level of  
12 a lot of companies. Some companies do a lot better than others.

13 So, I need some more specific guidance. You started  
14 on it, and I think you made some good points, that we should  
15 watch expenditures, and revenues, and so forth.

16 But it isn't always easy to apply the same rule to a  
17 public agency, whose mission is totally different from business.  
18 First of all, business is very cruel. The image I have of  
19 corporate America is a bunch of savages who don't give a darn  
20 about people, and the minute they have a problem, they start  
21 wiping them out, fire them, without any regard to how many years  
22 they've been with the company. It's a long story. I won't  
23 burden you with it now.

24 But it raises the hackles when I hear that, and I see  
25 business often taking the easiest way out, and that is  
26 eliminating people.

27 Other countries don't do that. They prosper just as  
28 much as we do, and in some cases much better. They have a more





1 humane approach to solving their problems. They take a  
2 temporary dip, they hang onto their employees. They don't just  
3 start firing them, right and left.

4 "Well, that's the American way. You've got to cut."

5 Well, I don't think that's the proper way to go. If  
6 that's what you mean, that everytime we hit a bump we're going  
7 to fire a lot of people, I'm not prepared to go along with you.

8 DR. SMITH: Senator, I certainly am not indicating  
9 that we are not a user-friendly environment, that we're serving  
10 our public.

11 Senator, I'm concerned when a school board meets, and  
12 it's not willing to talk about the real issues that the public  
13 is discussing.

14 SENATOR PETRIS: They should be unelected.

15 DR. SMITH: That's correct. I agree with you,  
16 absolutely.

17 SENATOR PETRIS: And they have been in some parts of  
18 the state, you know. They throw them out.

19 DR. SMITH: Yes, I agree with you there. We have no  
20 difference in that arena.

21 But certainly, I will say to you that I am talking  
22 about very simplistic things and business practices, I guess,  
23 more than just calling this a business.

24 I believe that when you run \$132 million through the  
25 turnstile, if you don't exercise certain business practices and  
26 certain business principles, that we're going to run into  
27 trouble. And I think that's our problem up and down the state  
28 in a number of our school districts, because we don't have the



1 leadership at the helm in our board and in our  
2 superintendences, et cetera, but I hold our boards responsible  
3 for that. And ultimately, I hold our constituencies responsible  
4 for that because they are not electing the most qualified  
5 possible.

6 But when we talk about just simple principles like  
7 not balancing your general ledger, forcing balances instead of  
8 doing it the right way, not having a plan, not having a  
9 three-year plan, a five-year plan, a ten-year plan with clear  
10 goals and objectives in terms of how we're going to -- what are  
11 we doing today to get ourselves there, if public education  
12 realized that it truly plans to be around and plans to be doing  
13 business 35, 40, 50, a hundred years from today, we've got to be  
14 able to clearly articulate what are we doing today to prepare  
15 ourselves for that. Are we waiting for it to become reactive,  
16 or continue to be reactive as we are in public education, versus  
17 becoming a proactive body?

18 The State of California is looking to the Board of  
19 Governors of Community Colleges for leadership. It looks for us  
20 to set the basic agenda. And if we are not willing and don't  
21 have the courage to set that agenda, then I think we're going to  
22 continue to get more of what we already have. And I believe if  
23 you continue to do what you've always done, you're going to  
24 continue to get what you already have. We don't like what we  
25 have, it's time to make a change.

26 And I'm trying to bring a different perspective to  
27 the Board. Some of us have expertise; some of us are teachers;  
28 some of us have expertise in the legal field. I have expertise



1 in the business community. I've worked with people. I've had  
2 thousands of employees as staff members, and I've understood the  
3 value of investing in them. And that is the reason I'm a member  
4 of this Board, and I'd like to continue to be a member of this  
5 Board.

6 CHAIRMAN LOCKYER: Senator Lewis.

7 SENATOR LEWIS: Dr. Smith, I believe there's 16  
8 members on the Board of Governors of the California Community  
9 College system.

10 DR. SMITH: Yes.

11 SENATOR LEWIS: Without naming names, I wouldn't want  
12 to do any irreparable damage to their future confirmation  
13 hearings, can you tell me if there's anybody else on the Board  
14 that you know that publicly endorsed Proposition 174?

15 DR. SMITH: Probably at least 50 percent, minimum.

16 SENATOR LEWIS: Fifty percent?

17 DR. SMITH: Minimum.

18 SENATOR LEWIS: That publicly endorsed?

19 DR. SMITH: I would say so, yes.

20 SENATOR LEWIS: Were any of those confirmed to your  
21 knowledge?

22 DR. SMITH: Yes.

23 SENATOR LEWIS: Subsequent to the --

24 DR. SMITH: Yes.

25 CHAIRMAN LOCKYER: Before I got here, I'll be real  
26 clear about that. Before I got here.

27 So, it may be relevant to you, John, but it sure  
28 isn't to me. I know where to draw the line, and it is





1 abundantly clear to me.

2 SENATOR LEWIS: Which line is that?

3 CHAIRMAN LOCKYER: It's an active advocate for the  
4 voucher system I will never vote to entrust public  
5 responsibilities to manage the great public school systems in  
6 this state. I think they're satanic in terms of -- and that's a  
7 stupid word, so I apologize for using it.

8 SENATOR LEWIS: I thought we were getting a rerun of  
9 the commercials, or something.

10 CHAIRMAN LOCKYER: No, we're getting my Christian  
11 righteousness as an active Episcopalian.

12 I think they undermine and destroy the institution  
13 that they have a responsibility to foster because of their  
14 inherent conflict in basic approach and philosophy.

15 That's my generic concern. Now, I've got a long list  
16 in addition to that with respect to Dr. Smith, which we'll get  
17 to shortly.

18 SENATOR LEWIS: Well, reasonable people can disagree,  
19 and I think Dr. Smith has made a very articulate case for the  
20 benefits of the voucher system, certainly for people in the  
21 inner city.

22 But I just don't understand, just because Dr. Smith  
23 endorsed Proposition 174, the voucher initiative, why that  
24 should be the guiding decision as to whether or not he'll be  
25 confirmed or not to the Board of Governors of the California  
26 Community Colleges.

27 CHAIRMAN LOCKYER: Well, I haven't heard anyone argue  
28 that that should be the only criteria applied, but it certainly



1 is a relevant one to assess his philosophy and perspective,  
2 along with every other consideration.

3 I'd say, I wish you were my friend, not someone I  
4 have to vote on to entrust this responsibility to. You're  
5 enormously bright, and interesting, and articulate, and have a  
6 wonderful presence. So, maybe even after I do this dreadful  
7 thing to you, we will still work at that. And I have the utmost  
8 respect, as a close friend of Howard Phillips, and people like  
9 that, for bright, conservative perspectives.

10 I'm troubled by a lot of the specifics.

11 I didn't want to cut you off if you had more you  
12 wanted to add. You probably made your point, I guess.

13 SENATOR LEWIS: Well, I guess the other point I would  
14 make is, I've received a fair amount of mail from some of the  
15 opponents, and I believe they're sitting in the back of the  
16 room, opposing Dr. Smith's confirmation.

17 It just seems to me that Dr. Smith is a very bright  
18 and a very innovative thinker. He's very articulate. He's  
19 answered every question so far today in a manner that's been  
20 very, very impressive.

21 But unfortunately for you, Dr. Smith, you're a  
22 Republican; you're a conservative Republican; you're a  
23 conservative Republican that endorsed Prop. 174, and you're a  
24 black conservative Republican that endorsed Prop. 174. That  
25 makes you a very dangerous man.

26 CHAIRMAN LOCKYER: Oh, John.

27 SENATOR AYALA: Makes him an extremist.

28 CHAIRMAN LOCKYER: Frankly, that the most disgraceful



1 thing I've ever heard you do, Senator, and I just want to make  
2 note of my disagreement.

3 We can ask for testimony, either pro or con. I would  
4 at least ask for pro in this kind of a circumstance.

5 The opposition, some of whom are in the room, have  
6 letters on file, and I think that the Committee is prepared to  
7 vote, unless there's someone that feels that they're anxious to  
8 make an additional comment.

9 I wouldn't want to discourage support statements, but  
10 I don't think it helps to hear opposition comments.

11 In asking for a motion by any Member of the  
12 Committee, let me just summarize my own thoughts.

13 It is that I think I have as profound a disagreement  
14 with any confirmation that I've seen so far with you with  
15 respect to approach, analysis and philosophy. I do agree that  
16 there is a great value in having business expertise and  
17 perspectives reflected on governing boards. And certainly, we  
18 need to do a better job of reforming education and of using tax  
19 monies in efficient ways.

20 It seems to me to be an almost consuming passion that  
21 that's so compelling for you that the business approach,  
22 efficiency, is the highest value, that often human values are  
23 secondary.

24 DR. SMITH: Senator, you couldn't be further from  
25 where I'm trying to come from.

26 CHAIRMAN LOCKYER: Well, let me just conclude, and  
27 I'll happy to have you respond.

28 So, I listened to the comments. I think they reflect





1 a lack of balance, and then I would have specific disagreements  
2 with respect to your enthusiasm for contracting out, which I  
3 think all too often marginalizes employees and ends benefits in  
4 order to expand profit or control costs.

5 I was dissatisfied with your analysis of potential  
6 increases in student fees. And of course, voucher education,  
7 which is just another form of contracting out, privatization,  
8 is, I think, as fundamental an issue as any in our society.

9 My own thought is this, one, I'm sure, about which we  
10 will disagree. But it is that in an increasingly complex and  
11 diverse society, we have to look for the things that pull us  
12 together. Privatization does the opposite, and it's a world  
13 view that I think causes retribalization, fragmentation, lack of  
14 community, and ultimate destruction of a modern diverse society.

15 I regard the public schools, or the public domain  
16 generally, but the public schools particularly, as the most  
17 promising opportunity to accomplish those goals of community and  
18 creating a civilized California.

19 I am sorry a person of your intellect sees another  
20 way, and I certainly respect everyone's right to chart their own  
21 course. I just think that I don't have to concur with that with  
22 my own vote and choose to exercise it by saying no today.

23 DR. SMITH: May I respond?

24 CHAIRMAN LOCKYER: Certainly, sir.

25 DR. SMITH: You said it's compelling. Let me tell  
26 you why it's compelling.

27 It's compelling because I've sat on school boards and  
28 watched us cut such basic services. It's compelling because I



1 see us cut out and have teachers buying supplies, yet I see over  
2 here tremendous amounts of waste.

3 So, what you may be suggesting to me is, because I  
4 indicate that waste, and a union happens to say that you're  
5 touching our sacred domain, that I should now fall in line with  
6 that at the sake of these kids.

7 You see, I had the parents, the poor parents, come to  
8 me and say to me how tough it really is. Even though I knew it,  
9 I really didn't know it the way I thought I did, even though I  
10 was raised in the environment myself.

11 You said to me that it's compelling. Well, certainly  
12 it's compelling when you walk into a classroom, and you see a  
13 picture of George Washington and Abraham Lincoln on the board,  
14 but yet you see all Hispanic and blacks and Asians in the  
15 classroom. But because you say to the organization that we've  
16 got to find a way to inspire those kids that I'm compelling and  
17 that I'm divisive.

18 You see, there aren't enough individuals in the State  
19 of California that are concerned about the plight of those kids  
20 in those urban cities. Too many of us are just assuming that  
21 everything is okay because no one is complaining in an organized  
22 fashion.

23 You also said that we need to pull together. I not  
24 only believe that, but I believe until we have individuals as  
25 members of these bodies who understand what's really going on in  
26 those communities, we'll never pull together, because, you see,  
27 we don't hear from that set of the population. They're not at  
28 these meetings. They're not at our Board of Governors meetings.



1 They can't afford to travel.

2 But when someone comes and wants to really try, and  
3 wants to really represent them, and believes that the body is  
4 really interested in embracing and learning more about what's  
5 happening in those communities that you see many of us don't  
6 even walk in, we're afraid of those environments.

7 So, I say to you that if I could go down to my school  
8 district, and you would find thousands of people, even the Star  
9 News, which is our major newspaper, found it necessary to, on  
10 the front page of the Sunday Times -- of their Sunday paper,  
11 excuse -- to indicate some of the things that I was advocating,  
12 and how they not only felt that they were sound, but they felt  
13 that if we don't begin to embrace some of these philosophies --  
14 and all I'm trying to do is say for us to come into open and  
15 honest dialogue about these issues.

16 CHAIRMAN LOCKYER: Well, I understand.

17 Senator Petris.

18 SENATOR PETRIS: I don't want to be unkind, but in  
19 view of your last statement, how do you explain your re-election  
20 defeat by those same people?

21 DR. SMITH: It was a voucher issue. That was the  
22 only issue.

23 SENATOR PETRIS: Was that the main issue?

24 DR. SMITH: That was the only issue. It was, oh,  
25 he's great in terms of understanding, and he's brought a  
26 tremendous amount of stability to the table.

27 In fact, the union wrote a very, very wrong article  
28 to the Star News, and it was printed, saying I was the only





1 friend of teachers on that board.

2 But when it came to the voucher initiative, all of a  
3 sudden, we found that we can't talk about everything openly.  
4 And that was a time where, let's part company, because you seem  
5 to be talking about something that threatens our strength.

6 And I'm saying, I don't want to threaten your  
7 strength. I want to figure out a way to have 80 percent of our  
8 students, who are performing at a D -- I'm trying to tell you a  
9 D -- if they're performing at a D grade point average, how many  
10 do you have that must have a failing grade point average to have  
11 a D in the aggregate? Thousands. But it was never discussed.  
12 And systematically, it was figured out, this guy is a threat;  
13 this guy is exposing the real truth, and he's going to cause  
14 work for us.

15 That's what was happening on our school board.

16 SENATOR PETRIS: I don't know. It sounds like a  
17 pretty good bunch of teachers.

18 I get the complaint that they just pass them no  
19 matter what they do in class. They really should get an F, but  
20 they get a passing grade. Teacher doesn't want to put up with  
21 them, so they get a C, or you know, they get a C-, and that's a  
22 common complaint that we hear up here. The teachers are not  
23 getting to the students, and they're not grading them properly  
24 just to move them along.

25 Now, if there's a bunch of teachers that give them  
26 Ds, it seems to me like they're trying to send somebody a  
27 signal.

28 DR. SMITH: That's true, but also, a number of those



1 students are getting poor grades because they don't come to  
2 school. We have some high schools where you have a 30-40  
3 percent attendance rate. I mean, that's saying that on any  
4 given day, 60 or 70 -- and on the aggregate, we only have a 78  
5 percent attendance rate. That means any given day, you'll find  
6 22 percent of our students are doing something other than being  
7 in school. Those are discouraged learners.

8 SENATOR PETRIS: Is that district-wide in that  
9 district?

10 DR. SMITH: That's correct.

11 And our program, where we're going after and  
12 retrieving these dropouts and convincing them to return to  
13 public education -- by the way, Senator. I'm the only one in  
14 the community doing this, and I know of no one else in L.A.  
15 County except for Edutrain, who just went out of business.

16 CHAIRMAN LOCKYER: I'm sorry, what was the "it"?

17 DR. SMITH: We go after kids who have dropped out of  
18 school, convincing them to return.

19 CHAIRMAN LOCKYER: Yes, I remember that.

20 Hey, I think it'd be great for you to do those  
21 things. I want to encourage you in your private capacity to  
22 continue to be a good parent, a good community leader, a good  
23 businessman, all of those things.

24 I hope that the Community College Board will benefit  
25 by the business advice of the other four business people that  
26 are on the Board, because that certainly deserves expression.

27 And I appreciate the chance to get to know you in  
28 this setting and give you the highest grades one can for being



1 an articulate, persuasive exponent of a particular viewpoint.  
2 It's one I just disagree with.

3 DR. SMITH: That's okay, I understand. And it's okay  
4 for us to disagree.

5 CHAIRMAN LOCKYER: We could go further, but it'll  
6 probably be saved for another time, if that's okay with you.

7 DR. SMITH: Sure.

8 CHAIRMAN LOCKYER: I'd enjoy that.

9 DR. SMITH: Sure.

10 CHAIRMAN LOCKYER: Thank you very much, sir.

11 What's the pleasure of the Committee?

12 SENATOR LEWIS: I move recommendation of  
13 confirmation.

14 CHAIRMAN LOCKYER: We have a motion by Senator Lewis.  
15 Call the roll, please.

16 SECRETARY WEBB: Senator Ayala.

17 SENATOR AYALA: No.

18 SECRETARY WEBB: Ayala no. Senator Lewis.

19 SENATOR LEWIS: Aye.

20 SECRETARY WEBB: Lewis aye. Senator Petris.

21 SENATOR PETRIS: No.

22 SECRETARY WEBB: Petris no. Senator Beverly.

23 SENATOR BEVERLY: Aye.

24 SECRETARY WEBB: Beverly aye. Senator Lockyer.

25 CHAIRMAN LOCKYER: No.

26 SECRETARY WEBB: Lockyer no. Fails two to three.

27 CHAIRMAN LOCKYER: Stays with the Committee.

28 DR. SMITH: Thank you for the opportunity to address





1 you, and I'll keep working on behalf of kids in the State of  
2 California.

3 CHAIRMAN LOCKYER: Good deal.

4 [Thereupon this portion of the  
5 Senate Rules Committee hearing  
6 was terminated at approximately  
7 5:30 P.M.]

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN J. MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing transcript of the Senate Rules Committee hearing was reported verbatim in shorthand by me, Evelyn J. Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 24<sup>th</sup> day of January, 1995.

  
EVELYN J. MIZAK  
Shorthand Reporter





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